

CASE DESCRIPTION – SUPERIOR COURTCase Number: 3AN-22-CIThis form is **not** required for cases filed electronically through TrueFiling. For District Court cases, use form CIV-125D.

Type of Action		For Court Use Only	
Check the box that best describes the case. Mark one box only.		Case Type	Action Code
Domestic Relations			
<input type="checkbox"/> Spouses with Minor Children (or pregnant) Agree on All Issues to End Marriage		Div or Cust w/Children	CISUDVC
<input type="checkbox"/> Spouses with Minor Children (or pregnant) do not Agree (or are unsure) on All Issues to End Marriage		Div or Cust w/Children	CISDVC
<input type="checkbox"/> Spouses without Minor Children (and not pregnant) Agree on All Issues to End Marriage		Divorce without Children	CISUDIV
<input type="checkbox"/> Spouses without Minor Children (and not pregnant) do not Agree (or are unsure) on All Issues to End Marriage		Divorce without Children	CISDIV
<input type="checkbox"/> Unmarried Parents Agree on Parenting Plan		Div or Cust w/Children	CISUCUS
<input type="checkbox"/> Unmarried Parents do not Agree (or are unsure) on Parenting Plan		Div or Cust w/Children	CISCUS
<input type="checkbox"/> Child Custody or Visitation by Person other than Parent		Domestic Relations Other	CIVIS
<input type="checkbox"/> Property Division – Unmarried Partners		Domestic Relations Other	CISPROP
<input type="checkbox"/> Stay Legally Married (have minor children or pregnant) - Agree on Property/Debt Division and Parenting Plan		Legal Separation	CIUCLS
<input type="checkbox"/> Stay Legally Married (have minor children or pregnant) - do not Agree (or are unsure) on Property/Debt Division or Parenting Plan		Legal Separation	CICLS
<input type="checkbox"/> Stay Legally Married (no minor children and not pregnant) - Agree on Property/Debt Division		Legal Separation	CIUSLS
<input type="checkbox"/> Stay Legally Married (no minor children and not pregnant) – do not Agree (or are unsure) on Property/Debt Division		Legal Separation	CISLS
<input type="checkbox"/> Annul (void) a Marriage		Domestic Relations Other	CIANNUL
<input type="checkbox"/> Paternity – Determine Person is Biological Father		Domestic Relations Other	CISPAT
<input type="checkbox"/> Paternity – Determine Person is not Biological Father		Domestic Relations Other	CIDPAT
<input type="checkbox"/> Paternity – Determine Both Biological and Non-Biological Father		Domestic Relations Other	CIDEPAT
<input type="checkbox"/> Genetic Testing - Failure to Comply with Order for Testing		Domestic Relations Other	CIOSCP
<input type="checkbox"/> Administrative Child Support Order – Modify or Enforce		Domestic Relations Other	CIPCS
<input type="checkbox"/> Alaska PFD or Native Dividend – Request Order		Domestic Relations Other	CIPND
<input type="checkbox"/> Support Order - Register, Modify, or Enforce Out-of-State Order		Domestic Relations Other	CIUIFSA
<input type="checkbox"/> Custody Order - Register, Modify, or Enforce Out-of-State Order		Domestic Relations Other	DR483
<input type="checkbox"/> Custody and Support Order - Register, Modify, or Enforce Out-of-State Orders		Domestic Relations Other	CIFCS
<input type="checkbox"/> Domestic Relations Order (not custody or support) – Register, Modify, or Enforce Out-of-State Order		Domestic Relations Other	CIDRFJ
Debt/Contract			
<input type="checkbox"/> Debt Collection		Civil Superior Court	CISDEB
<input type="checkbox"/> Claim by Buyer against Seller of Goods/Services		Civil Superior Court	CISCLAIM
<input type="checkbox"/> Employment – Discrimination		Civil Superior Court	CISEMPD
<input type="checkbox"/> Employment – Other than Discrimination		Civil Superior Court	CISEMP
<input type="checkbox"/> Other Contract		Civil Superior Court	CISOCT
Real Property (land or buildings)			
<input type="checkbox"/> Condemnation		Civil Superior Court	CISCNDM
<input type="checkbox"/> Foreclosure		Civil Superior Court	CISFOR
<input type="checkbox"/> Quiet Title (establish ownership)		Civil Superior Court	CISQIT
<input type="checkbox"/> Real Property Tax Foreclosure		Superior Court Misc. Petition	CISTAX
<input type="checkbox"/> Other Real Estate Matter		Civil Superior Court	CISREM
Landlord/Tenant			
<input type="checkbox"/> Eviction (may include rent and damages)		Eviction-Superior Court	CISFED
<input type="checkbox"/> Other Landlord/Tenant (no eviction)		Civil Superior Court	CISLT
Malpractice (misconduct while engaged in professional services)			
<input type="checkbox"/> Legal Malpractice		Civil Superior Court	CISLMP
<input type="checkbox"/> Medical Malpractice		Civil Superior Court	CISMMP
<input type="checkbox"/> Other Malpractice		Civil Superior Court	CISOMP

CASE DESCRIPTION – SUPERIOR COURT

Case Number: 3AN-22-

CI

Type of Action		For Court Use Only	
Check the box that best describes the case. Mark one box only.		Case Type	Action Code
Tort (unlawful act that causes harm, other than breach of contract)			
<input type="checkbox"/>	Wrongful Death	Civil Superior Court	CISPID
<input type="checkbox"/>	Automobile Tort (but not wrongful death)	Civil Superior Court	CISIDA
<input type="checkbox"/>	Claim against Owner of Real Property for Personal Injury	Civil Superior Court	CISPJO
<input type="checkbox"/>	Product Liability (defective item from manufacturer or seller)	Civil Superior Court	CISPL
<input type="checkbox"/>	Intentional Tort (for example: assault, battery, vandalism)	Civil Superior Court	CISIT
<input type="checkbox"/>	Slander/Libel/Defamation	Civil Superior Court	CISSLD
<input type="checkbox"/>	Other Tort	Civil Superior Court	CISIDO
<input type="checkbox"/>	Approval of Minor Settlement – Civil Petition <i>May also be filed as probate case.</i>	Superior Court Misc Petition	CISPET
Out-of-State Judgment <i>[For Domestic Relations judgments, select from last four options under that category.]</i>			
<input type="checkbox"/>	Registration of Out-of-State Money Judgment	Foreign Judgment Superior Ct	CISFOJ
<input type="checkbox"/>	Registration of Out-of-State Non-Money Judgment	Superior Court Misc Petition	CISPET
Other Civil			
<input checked="" type="checkbox"/>	Election Contest or Recount Appeal	Civil Superior Court	CISELE
<input type="checkbox"/>	Change of Name - Adult	Change of Name	CICON
<input type="checkbox"/>	Change of Name - Minor	Change of Name	CICONM
<input type="checkbox"/>	Confession of Judgment (all sides agree to entry of court order - not domestic relations)	Civil Superior Court	CISCONF
<input type="checkbox"/>	Structured Settlement – AS 09.60.200	Superior Court Misc Petition	CISSS
<input type="checkbox"/>	Administrative Agency Proceeding – Request for Court Assistance	Superior Court Misc Petition	CISWRNT
<input type="checkbox"/>	Arbitration - Action under Uniform Arbitration Act	Civil Superior Court	CISAP
<input type="checkbox"/>	Fraud	Civil Superior Court	CISFRAUD
<input type="checkbox"/>	Unfair Trade Practice and Consumer Protection	Civil Superior Court Clerk: Issue form CIV-128	CISUTP
<input type="checkbox"/>	Writ of Habeas Corpus (request for review of legality of detention)	Civil Superior Court	CIWHC
<input type="checkbox"/>	Fish & Game - Abatement & Forfeiture of Equipment	Superior Court Misc Petition	CISAF
<input type="checkbox"/>	Appointment of Trustee Counsel	Superior Court Misc Petition	CISTC
<input type="checkbox"/>	Action under Alaska Securities Act	Civil Superior Court	CISASA
<input type="checkbox"/>	Quarantine and Isolation	Superior Court Misc Petition	CISQI
<input type="checkbox"/>	Other Superior Court Complaint	Civil Superior Court	CISOCI
<input type="checkbox"/>	Other Superior Court Petition	Superior Court Misc Petition	CISPET
Post-Conviction Relief to Superior Court			
<input type="checkbox"/>	Post-Conviction Relief (after felony or misdemeanor conviction and sentencing in superior court)	Post-Conviction Relief-Sup Ct	CISPCR
Appeal to Superior Court - From Administrative Agency			
<input type="checkbox"/>	Election Contest or Recount Appeal – <i>see other civil</i>		
<input type="checkbox"/>	Department of Motor Vehicles (DMV) Appeal	Appeal from Admin Agency	CIADDMV
<input type="checkbox"/>	Employment Security and Unemployment Benefits Appeal	Appeal from Admin Agency	CIADRESA
<input type="checkbox"/>	Administrative Agency Appeal - Other	Appeal from Admin Agency	CIADR
<input type="checkbox"/>	Request for Relief from Child Support Services Division (CSSD) License Action	Petition for Review or Relief	CICSED
<input type="checkbox"/>	Request for Review of Non-Final Administrative Agency Decision	Petition for Review or Relief	CIPRA
<input type="checkbox"/>	Request for Relief from Administrative Agency Delay - AS 44.62.305	Petition for Review or Relief	CIPRLF
Appeal to Superior Court - From District Court			
<input type="checkbox"/>	Civil Appeal	Appeal from District Court	CIACI2
<input type="checkbox"/>	Criminal Appeal	Appeal from District Court	CIACRM
<input type="checkbox"/>	Minor Offense Appeal	Appeal from District Court	CIAMO
<input type="checkbox"/>	Small Claims Appeal	Appeal from District Court	CIASC
<input type="checkbox"/>	Request for Review of Civil, Criminal, or Minor Offense Case Decision	Petition for Review or Relief	CIPRD2

For more information on how to determine whether to file in Superior Court or District Court, see form CIV-126, *Information Sheet - Superior vs. District Court*

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

SUNNY GUERIN, ELIZABETH
ASISAUN TOOVAK & VERA LINCOLN

Plaintiff(s),

vs.

KEVIN MEYER, GAIL FENUMIAI, and
ALASKA, DIVISION OF ELECTIONS,

Defendant(s).

CASE NO. 3AN-3AN-22-010795 CI

**SUMMONS AND
NOTICE TO BOTH PARTIES
OF JUDICIAL ASSIGNMENT**

To Defendant: STATE OF ALASKA, DIVISION OF ELECTIONS

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 825 W. 4th Ave., Anchorage, Alaska 99501 within 20 days* after the day you receive this summons. In addition, a copy of your answer must be sent to the plaintiff's attorney or plaintiff (if unrepresented) Mara Michaletz, Holly Wells, Zoe Danner, whose address is: 510 L Street, #700, Anchorage, AK 99501

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at <https://public.courts.alaska.gov/web/forms/docs/tf-955.pdf> to inform the court. - OR - If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

TO: Plaintiff and Defendant

You are hereby given notice that:

- ☒ This case has been assigned to Superior Court Judge Morse and to a magistrate judge.
- ☐ This case has been assigned to District Court Judge _____.

CLERK OF COURT

6.23.22
Date



By: BW
Deputy Clerk

I certify that on 6.23.22 a copy of this Summons was ☒ mailed ☐ given to
☐ plaintiff ☒ plaintiff's counsel along with a copy of the
☐ Domestic Relations Procedural Order ☐ Civil Pre-Trial Order
to serve on the defendant with the summons.
Deputy Clerk BW

* The State or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

CIV-100 ANCH (10/17)(cs)
SUMMONS

Civil Rules 4, 5, 12, 42(c), 55

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

SUNNY GUERIN, ELIZABETH
ASISAUN TOOVAK & VERA LINCOLN

Plaintiff(s),

vs.

KEVIN MEYER, GAIL FENUMIAI, and
ALASKA, DIVISION OF ELECTIONS,

Defendant(s).

CASE NO. 3AN-3AN-22-06795 CI

**SUMMONS AND
NOTICE TO BOTH PARTIES
OF JUDICIAL ASSIGNMENT**

To Defendant: GAIL FENUMIAI, Director, Div. of Elections

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 825 W. 4th Ave., Anchorage, Alaska 99501 within 20 days* after the day you receive this summons. In addition, a copy of your answer must be sent to the plaintiff's attorney or plaintiff (if unrepresented) Mara Michaletz, Holly Wells, Zoe Danner, whose address is: 510 L Street, #700, Anchorage, AK 99501

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at <https://public.courts.alaska.gov/web/forms/docs/tf-955.pdf> to inform the court. - OR - If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

TO: Plaintiff and Defendant

You are hereby given notice that:

☒ This case has been assigned to Superior Court Judge Morse and to a magistrate judge.

☐ This case has been assigned to District Court Judge _____.



CLERK OF COURT

6.23.22
Date

By: Bw
Deputy Clerk

I certify that on 6.23.22 a copy of this Summons was ☒ mailed ☐ given to
☐ plaintiff ☒ plaintiff's counsel along with a copy of the
☐ Domestic Relations Procedural Order ☐ Civil Pre-Trial Order
to serve on the defendant with the summons.
Deputy Clerk Bw

* The State or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

CIV-100 ANCH (10/17)(cs)
SUMMONS

Civil Rules 4, 5, 12, 42(c), 55

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

SUNNY GUERIN, ELIZABETH
ASISAUN TOOVAK & VERA LINCOLN

Plaintiff(s),

vs.

KEVIN MEYER, GAIL FENUMIAI, and
ALASKA, DIVISION OF ELECTIONS,

Defendant(s).

CASE NO. 3AN-3AN-22-00795 CI

**SUMMONS AND
NOTICE TO BOTH PARTIES
OF JUDICIAL ASSIGNMENT**

To Defendant: KEVIN MEYER, Lieutenant Governor

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 825 W. 4th Ave., Anchorage, Alaska 99501 within 20 days* after the day you receive this summons. In addition, a copy of your answer must be sent to the plaintiff's attorney or plaintiff (if unrepresented) Mara Michaletz, Holly Wells, Zoe Danner, whose address is:
510 L Street, #700, Anchorage, AK 99501

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at <https://public.courts.alaska.gov/web/forms/docs/tf-955.pdf> to inform the court. - OR - If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

TO: Plaintiff and Defendant

You are hereby given notice that:

- ☒ This case has been assigned to Superior Court Judge Morse
and to a magistrate judge.
- ☐ This case has been assigned to District Court Judge _____

CLERK OF COURT

6-23-22
Date



By: BW
Deputy Clerk

I certify that on 6-23-22 a copy of this summons was ☒ mailed ☐ given to
☐ plaintiff ☒ plaintiff's counsel along with a copy of the
☐ Domestic Relations Procedural Order ☐ Civil Pre-Trial Order
to serve on the defendant with the summons.
Deputy Clerk BW

* The State or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

CIV-100 ANCH (10/17)(cs)
SUMMONS

Civil Rules 4, 5, 12, 42(c), 55

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Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

SUNNY GUERIN, ELIZABETH ASISAUN)
TOOVAK, and VERA LINCOLN,)

Plaintiffs,)

v.)

KEVIN MEYER, in his official capacity as)
Lieutenant Governor of the State of Alaska;)
GAIL FENUMIAL, in her official capacity as)
the Director of the Alaska Division of)
Elections, and the STATE OF ALASKA,)
DIVISION OF ELECTIONS,)

Defendants.)

Case No. 3AN-22-_____ CI

EXPEDITED COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs Sunny Guerin, Elizabeth Asisaun Toovak, and Vera Lincoln, by and through undersigned counsel, allege as follows:

PARTIES AND JURISDICTION

1. Plaintiff Sunny Guerin is a registered Alaska voter residing in the Municipality of Anchorage, Alaska. Ms. Guerin is a lifelong resident of Alaska and a Doyon, Limited shareholder.

2. Plaintiff Vera Lincoln is a registered Alaska voter residing in Fairbanks, Alaska. Ms. Lincoln is a lifelong resident of Alaska born in the City of Utqiagvik, Alaska and raised in Anaktuvuk Pass. She is an Arctic Slope Regional Corporation ("ASRC") shareholder.

3. Plaintiff Elizabeth Asisaun Toovak is a registered Alaska voter residing in City of Utqiagvik, Alaska. Ms. Toovak is a lifelong resident of Alaska born and raised in the City of Utqiagvik. She is an ASRC shareholder.

4. The State of Alaska, Division of Elections ("DOE" or the "Division") is the State of Alaska division charged with the administration of federal elections pursuant to AS 15.10.105 and subject to the laws of AS 18.80, *et seq* under AS 18.80.255 and 18.80.300(18). Kevin Meyer, as the Lieutenant Governor of the State of Alaska, is charged with controlling and supervising the Division of Elections. Division Executive Director, Gail Fenumiai, supervises the administration of elections administered by the State of Alaska.

5. Jurisdiction is proper under AS 22.10.020, whereby the Superior Court is the court of original jurisdiction over actual controversies in the State of Alaska and may declare the rights and legal relations of an interested party seeking declaratory judgment, and may award further necessary or proper relief based on a declaratory judgment.

FACTUAL ALLEGATIONS

6. The death of United States House Representative Don Young in March 2022 necessitated a special primary election and special general election to fill the vacancy of his office under AS 15.40.140.

7. The special primary election, which occurred on June 11, 2022 ("2022 Special Primary Election"), was a ranked-choice election to determine the top four candidates appearing on the ballot for the special general election scheduled for August 16, 2022 ("2022 Special Election").

8. The final ballot count for the 2022 Special Primary Election occurred on June 21, 2022. As of that date, the unofficial results of the 2022 Special Primary Election reflect that the top four candidates are as follows: Sarah Palin ("Palin") (43,577 votes, or 27.02%); Nick Begich ("Begich") (30,851 votes, or 19.13%); Al Gross ("Gross") (20,371 votes, or 12.63%); and Mary Peltola ("Peltola") (16,218 votes, or 10.06%).

9. Candidate Tara M. Sweeney ("Sweeney") received the fifth-greatest number of votes, totaling 9,547, or 5.92% of the votes cast.

10. On June 20, 2022, Gross announced that he was withdrawing from consideration from the special election. The deadline for candidates to withdraw from the 2022 Special General Election falls on June 26, 2022.

11. After Gross withdrew from candidacy in the election, Sweeney effectively became the candidate who received the fourth-highest number of votes in the 2022 Special Primary Election.

12. The next day, on June 21, 2022, Defendant Gail Fenumiai, on behalf of Defendant DOE, transmitted a letter to legal counsel representing Nick Begich stating

that the Division would not include Sweeney on the ballot for the 2022 Special General Election despite the fact that, in light of Gross's withdrawal, Sweeney was the candidate who received the fourth-highest number of votes in the 2022 Special Primary Election (the "DOE Position Letter" or "Fenumiai Letter"). A true and correct copy of the DOE Position Letter is attached as Exhibit A to this Complaint.

13. The Division asserted in the DOE Position Letter that it would not place Sweeney on the ballot because, as of the date of that letter, there were only 56 days until the 2022 Special Election, eight days less than the 64-day minimum provided by AS 15.25.100(c) for general elections.

14. The DOE Position Letter specifically invited parties that disagree with Defendants' decision unexpectedly excluding Sweeney from the ballot despite her position in the top four to "file suit immediately" because "the Division requires a final determination from the courts by noon on Tuesday, June 28, in order to print ballots in time to meet state and federal deadlines and keep the special general election on schedule to be combined with the regular August 16 primary." This action follows.

VIOLATION OF AS 15.25.100

15. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully incorporated herein.

16. The Division will and intends to violate the express language and plain meaning of AS 15.25.100 by excluding Sweeney from the 2022 Special Election ballot despite her position as one of the top four candidates for that election.

17. Unlike general elections which take place under static timelines and are, therefore subject to deadlines defined by Alaska Statute, Special elections organized

under AS 15.40.140, including the 2022 Special Election can trigger varying timelines dependent upon the nature of the special election and the timing of the event triggering the need for it.

18. Some special elections, such as the 2022 Special Election are extremely expedited, affording candidates, voters, and the Division, 90 days to execute a process that generally takes almost a year.

19. While the timeline, and thus the deadlines, imposed in a special election vary wildly from a general election, there are many components that remain the same in both special and general elections. Accordingly, AS 15.40.220 explains that:

Unless specifically provided otherwise, all provisions regarding the conduct of the primary election and general election shall govern the conduct of the special primary election and special election of the United States senator or United States representative, including provisions concerning voter qualifications; provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of municipalities; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, reviewing, and certification of returns; provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting.

Notably absent from this laundry list of “typical” election law provisions that also apply to special elections are any provisions relating to timing, deadlines, or other time- or date-based considerations. Conversely, the application of general election procedures and the method for selecting the winner of the election, including counting, reviewing, and certifying the election are included in the laundry list.

20. The composition of a ballot and the ways the candidates are identified on it is the same for both special and general elections. Thus, statutory provisions governing who is on a ballot and how they are removed or replaced on the ballot should apply to

both special and general elections, unless of course the statute dictates otherwise. To this end, Alaska Law clearly requires that Sweeny's name be added to the ballot in the 2022 Special Election as she is, without question, the candidate who received the fifth most votes in the primary election.

21. AS 15.25.100(c) states in part that:

if a candidate nominated at the primary election dies, withdraws, resigns, becomes disqualified from holding office for which the candidate is nominated, or is certified as being incapacitated in the manner prescribed by this section after the primary election and 64 or more days before the general election, ***the vacancy shall be filled by the director by replacing the withdrawn candidate with the candidate who received the fifth most votes in the primary election.*** [emphasis added].

22. The statute authorizing special elections, AS 15.40.140, mandates that special primary elections must be followed by a special general election "not less than 60 days after the special primary election."

23. Pursuant to AS 15.40.220, because AS 15.40.140 expressly identifies a timeline for special elections, deadlines based on the general election timeline such as the 64-day deadline imposed by AS 15.25.100(c) do not, as a matter of law, apply to special elections. The Division, anticipating and generally responding to the inapplicability of the general election deadlines, adopted a timeline for the 2022 special election as reflected on their website.

24. Consistent with the remaining substantive mandates of AS 15.25.100(c), if a candidate nominated in a special primary election dies, withdraws, resigns, or becomes otherwise disqualified from candidacy, Alaska voters are entitled to have the resulting vacancy on the general election ballot filled by the candidate who received the fifth most votes in the primary election.

25. Because Alaska voters granted Sweeney the fifth most votes in the 2022 Special Primary Election, Defendants must comply with their duties under Alaska law and place Sweeney, a duly-nominated candidate for office, on the ballot for the 2022 Special General Election.

**VIOLATION OF STATE OF ALASKA CONSTITUTION AND
THE FUNDAMENTAL RIGHT TO VOTE**

26. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully incorporated herein.

27. The Division's misinterpretation of Alaska Statute and its decision to prevent Sweeney from being placed on the ballot in the 2022 Special Election also directly violates the Alaska Constitution and the fundamental right to vote held by Plaintiffs, and all Alaska voters.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for relief as follows:

28. Issuance of an order on or before June 28, 2022 declaring that the 64-day time limit set forth in AS 15.25.100(c) does not apply to special primary elections and special elections conducted pursuant to AS 15.40.140;

29. Issuance of an order on or before June 28, 2022 declaring Defendants' announced intention to exclude Sweeney from the ballot is a violation of AS 15.25.100(c), AS 15.40.220;

30. Awarding Plaintiffs, as constitutional litigants, their costs and attorney's fees; and

31. The grant of such other and further relief as this Court deems just and equitable.

DATED this 23rd day of June, 2022.

BIRCH HORTON BITTNER & CHEROT
Attorneys for Plaintiffs

By: /s/ Mara E. Michaletz
Mara E. Michaletz, ABA #0803007
Holly C. Wells, ABA # 0511113
Zoe A. Danner, ABA #1911094

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23rd day of June, 2022, a true and correct copy of the foregoing was served via electronic delivery on the following:

Mr. Thomas S. Flynn
Ms. Margaret Paton-Walsh
Ms. Katherine Demarest
Assistant Attorneys General
State of Alaska, Department of Law
thomas.flynn@alaska.gov
margaret.paton-walsh@alaska.gov
kate.demarest@alaska.gov

BIRCH HORTON BITTNER & CHEROT

By: /s/ Cherise S.J. Chong

Director's Office
240 Main Street Suite 400
P.O. Box 110017
Juneau, Alaska 99811-0017
☎ 907-465-4611 📠 907-465-3203
elections@alaska.gov



Elections Offices 📠
Absentee-Petition 907-270-2700
Anchorage 907-522-8683
Fairbanks 907-451-2835
Juneau 907-465-3021
Nome 907-443-5285
Mat-Su 907-373-8952

STATE OF ALASKA
Division of Elections
Office of the Lieutenant Governor

June 21, 2022

Ms. Stacey Stone
Holmes Weddle & Barcott, P.C.
701 West Eighth Avenue, Suite 700
Anchorage, AK 99501-3408

Sent via email: SNichols@hwb-law.com

Dear Ms. Stone:

Earlier today, you asked whether the fifth-place candidate will advance to the August 16 special general election due to today's withdrawal of the candidate currently in third place. Because this withdrawal occurred less than 64 days before the election, Alaska law does not permit the fifth-place candidate to advance. AS 15.25.100(c) provides:

[I]f a candidate nominated at the primary election . . . withdraws . . . after the primary election and 64 or more days before the general election, the vacancy shall be filled by the director by replacing the withdrawn candidate with the candidate who received the fifth most votes in the primary election.¹

Although the election is not yet certified, Dr. Al Gross is currently in third place in the unofficial special primary results, so he would likely advance to the special general election. Dr. Gross, however, withdrew his candidacy from the special general and regular primary elections today. The special general election is 56 days away. Because there are fewer than 64 days before the election, the statute does not allow the Division of Elections to place the fifth-place candidate on the ballot.

The Division will, however, remove Dr. Gross' name from the special general ballot. The Division set the administrative deadline of noon on Sunday, June 26 to give candidates a chance to remove their names from the ballot after the Division certifies the election but before it begins printing ballots. The Division expects to certify the election on or before Saturday, June 25 and it must finalize the ballot on Tuesday, June 28.

Any party that disagrees with these decisions should file suit immediately. The Division requires a final determination from the courts by noon on Tuesday, June 28 in order to print ballots in time to meet state and federal deadlines and keep the special general election on schedule to be combined with the regular August 16 primary.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gail Fenumiai".

Gail Fenumiai, Director

¹ See also AS 15.40.220 (providing that "all provisions regarding the conduct of the . . . general election shall govern the conduct of the . . . special election of United States representative," unless specifically provided otherwise).

Holly C. Wells
Mara E. Michaletz
Zoe A. Danner
Birch Horton Bittner & Cherot
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Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

SUNNY GUERIN, ELIZABETH ASISAUN
TOOVAK, and VERA LINCOLN,

Plaintiffs,

v.

KEVIN MEYER, in his official capacity as
Lieutenant Governor of the State of Alaska;
GAIL FENUMIAI, in her official capacity as
the Director of the Alaska Division of
Elections, and the STATE OF ALASKA,
DIVISION OF ELECTIONS,

Defendants.

Case No. 3AN-22-06795 CI

MOTION FOR SUMMARY JUDGMENT

Plaintiffs Sunny Guerin, Elizabeth Asisaun Toovak, and Vera Lincoln, by and through undersigned counsel, hereby move this court for summary judgment pursuant to Alaska Rule of Civil Procedure 56 and seek declaratory relief against Defendants Kevin Meyer, Gail Fenumiai, and the State of Alaska, Division of Elections (the "Division" or "DOE") declaring that the exclusion of candidate Tara Sweeney ("Sweeney") from the

2022 Special Election ballot violates Alaska Statutory and constitutional law and requiring the Division to place candidate Sweeney on the ballot. For purposes of such motion, and in consideration of the highly expedited nature of this case and the gravity of the issues presented thereby, the parties stipulate that there are no disputed issues of material fact at issue in this case.

I. BACKGROUND

After the unexpected death of Congressman Don Young in March 2022, the Defendants were required, pursuant to Alaska Statute 15.40.140, to conduct special primary and general elections to fill the resulting vacant congressional seat. The requisite special primary election, which occurred on June 11, 2022 (the “2022 Special Primary Election”), was the first ranked-choice election in Alaska history. Under the ranked-choice voting system, Defendants are required to, in the course of administering the election, determine which four candidates from the 2022 Special Primary Election received the most votes, and to include those four candidates on the ballot at the 2022 Special Election, currently scheduled for August 16, 2022. The four candidates who received the most votes in the 2022 Special Primary Election were: Sarah Palin (“Palin”), with 43,577 votes, or 27.02% of the vote; Nick Begich (“Begich”), with 30,851 votes, or 19.13%; Al Gross (“Gross”), with 20,371 votes, or 12.63%, and Mary Peltola (“Peltola”), with 16,218 votes, or 10.06%.¹

Candidate Sweeney received the fifth-greatest number of votes, amounting to 9,547 votes, or 5.92% of the vote. On June 20, 2022, Gross announced that he was

¹ See State of Alaska - 2022 Special Primary Election Summary Report Unofficial Results, attached hereto as Exhibit A.

withdrawing from both the 2022 Special Primary Election and 2022 Special Election.²

The deadline which the DOE set for candidates to withdraw from the 2022 Special Election falls on June 26, 2022. In a written statement, attached to this motion as Exhibit B, Gross explained:

It is with great hope for Alaska's future that I have decided to end my campaign to become our state's next Congressman. There are two outstanding Alaska Native women in this race who would both serve our state well, and I encourage my supporters to stay engaged and consider giving their first-place vote to whichever of them best matches their own values. Thank you for your support.

The outstanding Alaska Native women referenced in Gross's statement are Peltola and Sweeney.³ Based on this statement, it is apparent that Gross, and Alaska voters, reasonably believed and expected that, with Gross's withdrawal from the race, Sweeney would be placed on the ballot as the candidate with the fifth highest number of votes.

On June 21, 2022, Begich, by and through his legal counsel, sent Defendant Fenumiai correspondence inquiring whether Sweeney, the fifth-place candidate from the 2022 Special Primary Election, would advance to the 2022 Special Election in light of Gross's withdrawal from candidacy. In response, Fenumiai stated that "because this withdrawal occurred less than 64 days before the election, Alaska law does not permit the fifth-place candidate to advance."⁴ In so deciding, Fenumiai applied the general

² See Al Gross withdraws from Alaska's U.S. House campaign, Anchorage Daily News, June 21, 2022, available at <https://www.adn.com/politics/2022/06/20/al-gross-withdraws-from-alaskas-us-house-campaign/>.

³ *Id.*

⁴ See June 21, 2022 letter from Fenumiai to attorney Stacey Stone (the "Fenumiai Letter"), attached hereto as Exhibit C.

election deadlines to the 2022 Special Election, despite the extremely expedited timeline for that election. The Division relied upon AS 15.25.100(c), which states in part:

if a candidate nominated at the primary election dies, withdraws, resigns, becomes disqualified from holding office for which the candidate is nominated, or is certified as being incapacitated in the manner prescribed by this section after the primary election and 64 or more days before the general election, ***the vacancy shall be filled by the director by replacing the withdrawn candidate with the candidate who received the fifth most votes in the primary election.*** [emphasis added].

Fenumiai did not address the impact on her analysis, if any, of the fact that the deadline that the DOE set for candidate withdrawal, June 26, had not yet elapsed. However, Fenumiai specifically invited interested parties that disagree with Defendants' decision to exclude Sweeney from participation in the 2022 Special General Election to "file suit immediately" because "the Division requires a final determination from the courts by noon on Tuesday, June 28, in order to print ballots in time to meet state and federal deadlines and keep the special general election on schedule to be combined with the regular August 16 primary."⁵ Therefore, under the timeline that the DOE itself created, it appears that no logistical barrier exists to placing the fifth-highest ranking candidate on the ballot so that, on the day of the 2022 Special General Election, voters may exercise their fundamental right to participate in the political process by ranking the four remaining candidates who received the highest number of votes in the 2022 Special Primary Election in order of preference.

II. ANALYSIS

The Division's stated decision to exclude Sweeney from the ballot despite the intent of the legislature, the clear and plain meaning of Alaska Statute, and the

⁵ *Id.*

expectations of the voters and candidates, directly violates Alaska Statute. Further, the Division's interpretation of Alaska State Statute in a manner that deprives voters of the opportunity to vote for the candidate that the voters have intentionally and clearly nominated is a violation of the Alaska Constitution and the well-established and fiercely protected fundamental right of the voters to select their political representatives.

A. THE DIVISION'S STATED POSITION VIOLATED THE PLAIN LANGUAGE OF AS 15.25.100 ON ITS FACE

The Division's decision to exclude Sweeney from the ballot despite her position in the top four candidates for the 2022 Special Election after Gross's resignation directly violates the express requirements of AS 15.25.100(c). Alaska Statute 15.25.100(c) requires that Sweeney's name be placed on the ballot in light of the resignation of Gross and her position in the top four candidates. Specifically, AS 15.25.100 (c) states:

Except as otherwise provided in (d) of this section, if a candidate nominated at the primary election dies, withdraws, resigns, becomes disqualified from holding office for which the candidate is nominated, or is certified as being incapacitated in the manner prescribed by this section after the primary election and 64 or more days before the general election, *the vacancy shall be filled by the director by replacing the withdrawn candidate with the candidate who received the fifth most votes in the primary election.* (emphasis added).

Despite the clear and plain meaning of the statute, the Division has expressed intent to violate its express terms, refusing to replace the withdrawn candidate with the candidate receiving the fifth most votes in the primary election. The Division has distorted Alaska law to ignore the substantive requirements in the statute and instead impose the general election deadlines to the special election. This interpretation not only directly violates the statute, it ignores the most basic rules of statutory interpretation, undermining the plain language of the statutes, the intent of the Alaska legislature, and even the expectations of the voters and candidates.

Instead of complying with the substance of AS 15.25.100, the Division undermines it, committing to the application of general election timelines and deadlines on the extremely expedited special election in contravention of Alaska law. This attempt by the Division to prevent Sweeney from appearing on the ballot due to general election deadlines is misplaced and does not comply with applicable law. Despite the Division's misguided attempt to find otherwise, as a matter of law and necessity, neither general election time lines, nor the deadlines under them, apply to special elections. Pursuant to AS 15.40.100, a special election called to fill a vacancy in the office of the United States Senate, must be "held on a date not less than 60, nor more than 90, days after the date the vacancy occurs, to be followed by a special election on the first Tuesday that is not a state holiday occurring not less than 60 days after the special primary election under AS 15.40.142(a)."

Although special elections follow very different and often varying deadlines and time limitations than general elections, the fundamental election practices and procedures applied to general elections are unrelated to the unique time constraints in special elections and thus, as a matter of law and policy, do apply in special elections. The Alaska legislator codified when general election provisions apply and do not apply to special elections. Alaska Statute 15.40.220 states:

Unless specifically provided otherwise, all provisions regarding the conduct of the primary election and general election shall govern the conduct of the special primary election and special election of the United States senator or United States representative, including provisions concerning voter qualifications; provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of municipalities; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, reviewing, and certification of returns;

provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting.

Pursuant to AS 15.40.220, because AS 15.40.140 expressly identifies a timeline within which Defendants must conduct a special general election—and authorizes the DOE to adopt its own timeline of deadlines to facilitate such special election—provisions of Alaska law which contain conflicting timelines, such as the 64-day deadline imposed by AS 15.25.100(c), do not apply to special elections. Therefore, consistent with the remaining substantive mandates of AS 15.25.100(c), if a candidate nominated in a special primary election resigns, as was the case here, Alaska voters are entitled to have the resulting vacancy on the election ballot filled by the candidate who received the fifth most votes in the primary election. Because Alaska voters granted Sweeney the fifth most votes in the 2022 special primary, the Division must comply with their duties under Alaska law and place Sweeney, a duly-nominated candidate for office, on the ballot for the 2022 Special Election.

The Division itself is readily aware of the differences regarding the special election timeline as compared to that of a general election. Indeed, the Division has adopted a separate and distinct timeline for the election that imposes different deadlines on the special election. For example, the Division imposed a June 26, 2022 candidate withdrawal deadline, ensuring that this deadline occurred in advance of the deadline for DOE to finalize the names of candidates appearing on the ballot.

B. THE DIVISION'S INTERPETRATION OF ALASKA STATUTE CONTRADICTS LEGISLATIVE INTENT

The inclusion of Sweeney on the 2022 Special General Election ballot is also compelled by both Alaska jurisprudence and the legislative history surrounding ranked-choice voting in Alaska. In Alaska, evaluation of any case involving an election begins

with acknowledgement of the “bedrock principle that ‘the right of the citizens to cast their ballots and thus participate in the selection of those who control their government is one of the fundamental prerogatives of citizenship.’”⁶ This is because, as the right to vote “encompasses the voter’s right to express the voter’s opinion and is a way to declare the voter’s full membership in the political community,” the right to vote “is fundamental to our concept of democratic government.”⁷ The Alaska Supreme Court has, for decades, recognized “the profound importance of citizens’ rights to select their leaders” and has observed that “[c]ourts are reluctant to permit a wholesale disenfranchisement of qualified electors through no fault of their own.”⁸

Thus, in recognition of these principles, in reviewing and interpreting election statutes, Alaska courts uniformly hold that, where “any reasonable construction of a statute” can avoid voter disenfranchisement, “the courts should and will favor it.”⁹ Therefore, election statutes can, and should be construed so that as many people are enfranchised as possible within the bounds of the law.

⁶ *Miller v. Treadwell*, 245 P.3d 867, 868 (Alaska 2010) (quoting *Carr v. Thomas*, 586 P.2d 622, 626 (Alaska 1978) (in turn quoting *Sanchez v. Bravo*, 251 S.W.2d 935, 938 (Tex.Civ.App.1952))) (internal alterations omitted).

⁷ *Dansereau v. Ulmer*, 903 P.2d 555, 559 (Alaska 1995); see also *Bush v. Gore*, 531 U.S. 98, 104 (2000) (emphasizing that “[w]hen the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter”).

⁸ *Miller*, 245 P.3d at 869; *Carr*, 586 P.2d at 626.

⁹ *Id.*; see also *Reese v. Dempsey*, 48 N.M. 485, 153 P.2d 127, 132 (1944) (adopted in *Carr*, 586 P.2d at 626); *Edgmon v. State, Off. of Lieutenant Governor, Div. of Elections*, 152 P.3d 1154, 1157 (Alaska 2007) (opining that a voter “shall not be disenfranchised because of mere mistake, but his intention shall prevail.”).

In addition to these election-law specific principles, ordinary rules governing statutory construction also provide useful guidance in ascertaining the meaning of a statute. As the Alaska Supreme Court explains, “in interpreting a statute we ‘look to the plain meaning of the statute, the legislative purpose, and the intent of the statute.’”¹⁰ Courts apply a sliding-scale approach where “[t]he plainer the statutory language is, the more convincing the evidence of contrary legislative purpose or intent must be” to rebut that meaning.¹¹ Courts are reluctant to adopt statutory constructions that reach absurd results.¹²

Here, the language of the applicable statutes is abundantly clear: deadlines in rules governing typical primary and general elections do not apply to the tightened timelines the DOE must set in special elections; however, the substantive provisions of such rules remain in effect in the absence of contrary provisions impacting special elections. Alaska Statute 15.25.100(c) has both time-related and substantive components: its substantive component mandates that, “if a candidate nominated at the primary election dies, withdraws, resigns, becomes disqualified from holding office for which the candidate is nominated, or is certified as being incapacitated in the manner prescribed by this section...the vacancy shall be filled by the director by replacing the withdrawn candidate with the candidate who received the fifth most votes in the primary election.”¹³ In contrast,

¹⁰ *State, Dep’t of Commerce, Cmty. & Econ. Dev., Div. of Ins. v. Alyeska Pipeline Serv. Co.*, 262 P.3d 593, 597 (Alaska 2011) (quoting *Premera Blue Cross v. State, Dep’t of Commerce, Cmty. & Econ. Dev., Div. of Ins.*, 171 P.3d 1110, 1115 (Alaska 2007)).

¹¹ *Id.* (quoting *Gov’t Emp. Ins. Co. v. Graham-Gonzalez*, 107 P.3d 279, 284 (Alaska 2005)).

¹² *Premera Blue Cross*, 171 P.3d at 1115; *Schacht v. Kunimune*, 440 P.3d 149, 151 (Alaska 2019).

¹³ AS 15.25.100(c).

its time-related provision mandates that this will occur only in the event of vacancies occurring “after the primary election and 64 or more days before the general election.”¹⁴ Because special election rules prescribe a different, and much tighter, timeline for special elections, while the substantive provisions of AS 15.25.100(c) will continue to apply, the 64-day deadline will not.

This is consistent with the legislative history surrounding ranked-choice voting in Alaska. Ranked-choice voting significantly changed Alaska’s previous party-based primary system with an open, nonpartisan primary, and established ranked-choice voting in general elections. As the Alaska Supreme Court explained in *Meyer v. Alaskans for Better Elections*,¹⁵ the ranked-choice voting system “changes the status quo by forwarding four candidates for voters to rank in the general election by ranked-choice voting.”¹⁶ Paired together in Ballot Measure 2 with an initiative aimed at increased disclosure requirements for campaign financing, the objective of both the ranked-choice voting initiative, and Ballot Measure 2 as a whole, was to ensure, “when moving away from party primary elections and allowing for more candidates on the general election ballot” that “voters have adequate and accurate information about who is paying for campaign communications to influence their vote.”¹⁷ In particular, the Court explained that provisions of law which “increase voter knowledge logically relate[] to election reform.”¹⁸ In adopting Ballot Measure 2, Alaska voters cast their votes and expressed that

¹⁴ *Id.*

¹⁵ 465 P.3d 477 (Alaska 2020).

¹⁶ *Meyer*, 465 P.3d at 499.

¹⁷ *Id.*

¹⁸ *Id.*

it was their will that ranked-choice voting, as described in the initiative, would become the procedure through which applicable elections thereafter were conducted.¹⁹ As the supported and adeptly explained in the detailed affidavit submitted by Scott Kendall, one of the drafters of Ballot Measure 2, the Division's interpretation of Alaska Statute to foreclose Sweeney's placement on the ballot despite her position in the top four candidates flies against the intent of voter initiated adoption of rank-choice voting. The assertions and statement of Mr. Kendall are all grounded in law and thus the statements of law relied upon by Mr. Kendall are incorporated into this motion.

When Defendants decide, mid-election, to disregard the fundamental assumptions underlying the ranked-choice voting system—namely, that there will be four candidates appearing on any given general election ballot, and that such candidates will be the four eligible candidates who received the most votes in the primary election—the will of the people in adopting the ranked-choice voting system is disregarded entirely. This result is not only inconsistent with the plain language of DOE's governing statutes, and with the legislative history surrounding ranked-choice voting in Alaska, but is also manifestly unjust and serves to disenfranchise Alaska voters and undermine the integrity of the political system. Alaska voters and Alaska candidates—Gross included—have a reasonable expectation that Defendants will follow their own rules and comply with the procedural requirements contained in the Alaska Statutes, including the procedure set forth in AS 15.25.100(c). Disregarding those rules in the middle of a special election

¹⁹ See, e.g., *City of Fairbanks v. Fairbanks Convention & Visitors Bureau*, 818 P.2d 1153, 1155 (Alaska 1991) (expressing deferential attitude of Alaska appellate courts toward “the people’s initiative right”).

causes, at a minimum, voter confusion and distrust, and cannot be justified under any reasonable theory of statutory construction.

C. THE DIVISION'S INTENT TO EXCLUDE SWEENEY FROM THE BALLOT VIOLATES THE FUNDAMENTAL RIGHT TO VOTE UNDER THE ALASKA CONSTITUTION

The Division's decision to place only the top three candidates on the ballot not only directly violates Alaska Statute, it also usurps "[t]he right of the citizen[s] to cast [their] ballot[s] and thus participate in the selection of those who control [their] government...", which is according to the Alaska Supreme Court, "one of the fundamental prerogatives of citizenship."²⁰ The gravity of the violation of the voter's right to select their chosen candidate arising from the Division's misinterpretation of Alaska Statute triggers strict scrutiny by the Alaska Supreme Court. Unlike *Sonneman v. State*, 969 P.2d 632 (Alaska 1998)²¹, where the bias against candidates was merely positional, Sweeney will be completely foreclosed from appearing on the ballot despite the express language of the statute, the intent of the voters, and the expectations of both the voters and the candidates. The burden the Division's position takes on Plaintiffs and all Alaska voters is severe, limiting the right to vote to certain candidates despite the letter and intent of the law.

In light of the nature of the interest and the burden at issue, the Division must demonstrate a compelling interest to exclude Sweeney from the ballot and apply general election timelines to the expedited special election. This burden cannot be met as no such interest exists. The placement of Sweeney's name on the ballot can be done and

²⁰ *Miller v. Treadwell*, 245 P.3d 867, 868–69 (Alaska 2010).

²¹ *Sonneman v. State*, 969 P.2d 632 (Alaska 1998).

done without disturbing the finality and integrity of the election or in any way harming voters or the voting process. On the other hand, failing to place Sweeney's name on the ballot will directly undermine the integrity of the election, the expectations of the voters, and even the expectations of the candidates, including Gross.

III. CONCLUSION

When Alaska voters adopted the ranked-choice voting system, they uniformly understood that, in general elections for congressional seats, they would have the ability to rank in order of preference on election day the four qualified candidates who had received the greatest number of votes in the primary election. By statute, this guarantee applies with equal force to the tightened timeline created by the DOE to conduct a special election to fill the vacant congressional seat existing after the untimely death of Don Young. Therefore, where Al Gross withdrew from candidacy in the 2022 Special General Election in advance of the DOE's deadline to do so, DOE must comply with its governing statutes and place the candidate with the fifth-highest number of votes in the 2022 Special Primary Election, Tara M. Sweeney, on the ballot for the 2022 Special General Election.

By its own admission, no logistical bar exists to DOE doing so. DOE has not yet formally announced which candidates will be on the ballot in the 2022 Special General Election—beyond its proclamation that Sweeney will not be one of them—and has not yet printed a single ballot for such election. But, in the event DOE does not comply with its statutory mandates, the integrity of the ranked-choice voting system is compromised, and the guarantee of Alaska voters on election day to vote by ranking the top four candidates from the primary election in order of preference is eviscerated. For these reasons, and those articulated above, this Court should grant summary judgment in

Plaintiffs' favor; declare Defendants in violation of Alaska law for failing to include candidate Tara M. Sweeney on the ballot for the 2022 Special General Election in light of Al Gross's withdrawal from such election; and order that Defendants must comply with Alaska law and with the timeline they set for DOE and ensure that, in the event a top-four candidate for a special general election withdraws prior to DOE's deadline to do so, the candidate with the fifth-most votes is placed on the ballot.

DATED this 23rd day of June, 2022.

BIRCH HORTON BITTNER & CHEROT
Attorneys for Plaintiffs

By: /s/ Mara E. Michaletz
Holly C. Wells, ABA #0511113
Mara E. Michaletz, ABA #0803007
Zoe A. Danner, ABA #1911094

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23rd day of June 2022, a true and correct copy of the foregoing was served via electronic delivery on the following:

Mr. Thomas S. Flynn
Ms. Margaret Paton-Walsh
Ms. Katherine Demarest
Assistant Attorneys General
State of Alaska, Department of Law
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BIRCH HORTON BITTNER & CHEROT

By: /s/ Cherise S.J. Chong

State of Alaska - 2022 SPECIAL PRIMARY ELECTION
Election Summary Report
June 11, 2022
UNOFFICIAL RESULTS

Registered Voters: 161,614 of 587,174 (27.52%)

Ballots Cast: 161,614

U.S. Representative (Vote for 1)

		Total	
Times Cast		161,614 / 587,174	27.52%
Candidate	Party	Total	
Aguayo, Dennis W. "Denny"	NON	31	0.02%
Armstrong, Jay R.	REP	286	0.18%
Beal, Brian T.	UND	19	0.01%
Beck, Tim	UND	96	0.06%
Begich, Nick	REP	30,851	19.13%
Brelsford, Gregg B.	UND	283	0.18%
Brown, Robert	NON	36	0.02%
Bye, Chris	LIB	1,048	0.65%
Callahan, John T.	REP	114	0.07%
Carle, Arlene	NON	107	0.07%
Claus, Santa	UND	7,619	4.72%
Coghill, John B. Jr.	REP	3,841	2.38%
Constant, Christopher S.	DEM	6,223	3.86%
Dutchess, Lady Donna	NON	87	0.05%
Florschutz, Otto H. III	REP	193	0.12%
Foster, Laurel A.	NON	338	0.21%
Gibbons, Thomas R. "Tom"	REP	94	0.06%
Griffin, Karyn	UND	66	0.04%
Gross, Al	NON	20,371	12.63%
Halcro, Andrew J.	NON	3,012	1.87%
Heintz, Ted S.	NON	70	0.04%
Hibler, William D. III "Bill"	NON	25	0.02%
Howe, John Wayne	AIP	380	0.24%
Hughes, David	UND	54	0.03%
Knight, Don	NON	46	0.03%
Lowenfels, Jeff B.	NON	5,992	3.72%
Lyons, Robert "Bob"	REP	197	0.12%
McCabe, Anne M.	NON	118	0.07%
Melander, Mikel E.	REP	17	0.01%
Mettler, Sherry M.	UND	92	0.06%
Milligan, Mike	DEM	607	0.38%
Myers, J.R.	LIB	283	0.18%
Notti, Emil	DEM	1,761	1.09%
Ornelas, Robert		82	0.05%

Candidate	Party	Total	
Palin, Sarah	REP	43,577	27.02%
Pellegrini, Silvio E.	UND	70	0.04%
Peltola, Mary S.	DEM	16,218	10.06%
Revak, Joshua C.	REP	3,784	2.35%
Sumner, Maxwell	REP	133	0.08%
Sweeney, Tara M.	REP	9,547	5.92%
Thistle, David	UND	23	0.01%
Thomas, Ernest F.	DEM	198	0.12%
Trotter, Richard "Clayton"	REP	121	0.08%
Welter, Bradley D.	REP	24	0.01%
Williams, Jason G.	UND	37	0.02%
Woodward, Jo	REP	44	0.03%
Wool, Adam L.	DEM	2,727	1.69%
Wright, Stephen	REP	332	0.21%
Total Votes		161,274	
		Total	



FOR IMMEDIATE RELEASE

DATE: 6/20/22

Contact: info@dralgrossak.com

Al Gross Withdraws from Congressional Race

ANCHORAGE, AK – Al Gross is withdrawing from both the special general and regular elections for U.S. House of Representatives. Dr. Gross is releasing the following statement:

“It is with great hope for Alaska’s future that I have decided to end my campaign to become our state’s next Congressman. There are two outstanding Alaska Native women in this race who would both serve our state well, and I encourage my supporters to stay engaged and consider giving their first-place vote to whichever of them best matches their own values. Thank you for your support.”

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Juneau 907-465-3021
Nome 907-443-5285
Mat-Su 907-373-8952

STATE OF ALASKA
Division of Elections
Office of the Lieutenant Governor

June 21, 2022

Ms. Stacey Stone
Holmes Weddle & Barcott, P.C.
701 West Eighth Avenue, Suite 700
Anchorage, AK 99501-3408

Sent via email: SNichols@hwb-law.com

Dear Ms. Stone:

Earlier today, you asked whether the fifth-place candidate will advance to the August 16 special general election due to today's withdrawal of the candidate currently in third place. Because this withdrawal occurred less than 64 days before the election, Alaska law does not permit the fifth-place candidate to advance. AS 15.25.100(c) provides:

[I]f a candidate nominated at the primary election . . . withdraws . . . after the primary election and 64 or more days before the general election, the vacancy shall be filled by the director by replacing the withdrawn candidate with the candidate who received the fifth most votes in the primary election.¹

Although the election is not yet certified, Dr. Al Gross is currently in third place in the unofficial special primary results, so he would likely advance to the special general election. Dr. Gross, however, withdrew his candidacy from the special general and regular primary elections today. The special general election is 56 days away. Because there are fewer than 64 days before the election, the statute does not allow the Division of Elections to place the fifth-place candidate on the ballot.

The Division will, however, remove Dr. Gross' name from the special general ballot. The Division set the administrative deadline of noon on Sunday, June 26 to give candidates a chance to remove their names from the ballot after the Division certifies the election but before it begins printing ballots. The Division expects to certify the election on or before Saturday, June 25 and it must finalize the ballot on Tuesday, June 28.

Any party that disagrees with these decisions should file suit immediately. The Division requires a final determination from the courts by noon on Tuesday, June 28 in order to print ballots in time to meet state and federal deadlines and keep the special general election on schedule to be combined with the regular August 16 primary.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gail Fenumiai".

Gail Fenumiai, Director

¹ See also AS 15.40.220 (providing that "all provisions regarding the conduct of the . . . general election shall govern the conduct of the . . . special election of United States representative," unless specifically provided otherwise).

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Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

SUNNY GUERIN, ELIZABETH ASISAUN
TOOVAK, and VERA LINCOLN,

Plaintiffs,

v.

KEVIN MEYER, in his official capacity as
Lieutenant Governor of the State of Alaska;
GAIL FENUMIAI, in her official capacity as
the Director of the Alaska Division of
Elections, and the STATE OF ALASKA,
DIVISION OF ELECTIONS,

Defendants.

Case No. 3AN-22-06795 CI

AFFIDAVIT OF SCOTT KENDALL

STATE OF ALASKA)
) ss:
Third Judicial District)

I, Scott Kendall, being first duly sworn, on oath depose and state:

1. I have been a licensed attorney in Alaska for over 18 years.

2. One of my primary areas of practice is campaign and election law, in which I have worked off and on since at least 2006.

3. In 2019, I was the primary author in drafting the campaign reform ballot measure known at the “Better Elections Initiative” denoted as “19AKBE” by the Division of Elections. After several legal challenges this measure was qualified for the ballot as “Ballot Measure 2.” The measure passed in the 2020 General Election and became law 90 days after certification.

4. All elections conducted by the State of Alaska this year will be conducted under the system in Ballot Measure 2, including the Special Primary and Special General Elections made necessary by the passing of Congressman Don Young.

5. Ballot Measure 2 contains a “Top 4 Open Primary”. In practice that means that every voter receives the same ballot with every candidate on it—regardless of the voters’ or the candidates’ partisan affiliation (or lack thereof). The four candidates receiving the highest number of votes in the primary appear on the general election ballot.

6. Ballot Measure 2 contains a contingency that, should any of the top four primary finishers drop out by the candidate withdrawal deadline, every candidate moves up one slot and the candidate in fifth place (if any) moves on to the general election ballot.

7. One of the primary purposes of Ballot Measure 2, both during the drafting—and in the way that it was presented in literature, media, and debates—is that it would prevent the manipulation of Alaska’s election system by political parties or other powerful interests. The candidate substitution regime is a critical and necessary component serving that purpose, because it prevents manipulation of the voters’ choices.

8. Under the old system if a candidate withdrew, the party of the withdrawing candidate held the power to hand pick a replacement candidate, or to leave the slot empty, if that served the party's strategic ends—i.e. often “placeholder” candidates were employed to help clear the field for another favored candidate. This would artificially reduce the number of choices available to the voters on the general election ballot, reduce the voters' collective power, and direct the race towards a party-preferred outcome.

9. The candidate-replacement deadline provided in Ballot Measure 2 for regular general elections was intended to harmonize with the candidate withdrawal deadlines, and ballot finalization deadlines, applicable to regular general elections as necessary to allow a fifth place candidate to be swapped in should any top four finisher withdraw before that deadline.

10. The Division of Elections is misapplying that deadline to the current Special General Election in a manner that is completely contrary to the intent of Ballot Measure 2 as drafted and as understood by the voters who chose to enact it. Ballot Measure 2 could not contain dates for every permutation or possible deadline that could arise as a result of a need for a special election. As the Division is aware, there is a certain amount of discretion regarding timelines that it must be allowed in order to surmount the significant logistical hurdles of conducting a special election.

11. In the case of this Special Primary and General Election, the Division has already had to administratively set certain dates and deadlines that are not dictated in statute with specificity. For example, they have already administratively set a deadline for candidates to file for the Special Primary (April 1, 2022), withdraw from the Special Primary (April 4, 2022), and—particularly relevant here—withdraw from the Special

General (June 26, 2022). These deadlines are not specifically set in statute, rather the Division used its discretion to set them in order to harmonize them with ballot printing deadlines and to allow for the Special General to be combined with the Regular Primary election on a single ballot.

12. It is uncontested that the third place finisher, Al Gross, properly withdrew from the Special General Election prior to June 26, 2022.

13. The Division acted properly in creating all of the aforementioned administratively-set deadlines. However, the Division's misapplication of Ballot Measure 2's statutory deadline for "regular" general elections to this Special General Election is contrary to the language of the statute, contrary to logic, and will disenfranchise voters in a manner contrary to Ballot Measure 2's language and intent. Based on the circumstances relevant to this Special General, the Division clearly should have also harmonized the candidate withdrawal deadline with the date for candidate replacement. The Division's illogical application of the "regular" general election deadline for candidate replacement in this circumstance would require that, in order to be replaced, a candidate must withdraw before he or she even knows the outcome of the election. This misapplication would render the candidate replacement regime meaningless, or subject to manipulation, in special elections which is clearly against the intent and language of Ballot Measure 2 and the will of the voters.

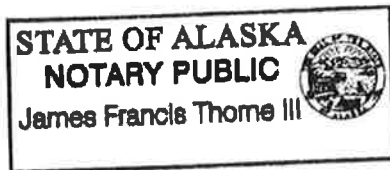
14. Finally, there appears to be no logistical rationalization for the Division to, on the one hand, remove Al Gross from the Special General Ballot, but not replace him with the fifth-place candidate. If the ballot designs have not been finalized, it will be no burden to the Division to substitute the fifth-place candidate for Dr. Gross.

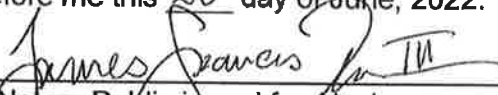
FURTHER AFFIANT SAYETH NAUGHT.



Scott Kendall

SUBSCRIBED AND SWORN to before me this 23rd day of June, 2022.





Notary Public in and for Alaska
My Commission expires: June 26, 2026

anc.law.ecf@alaska.gov

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE**

SUNNY GUERIN, ELIZABETH ASISAUN)
TOOVAK, & VERA LINCOLN)

Plaintiffs,

v.)

KEVIN MEYER, in his official capacity as)
Lieutenant Governor, GAIL FENUMIAI, in)
her official capacity as Director)
of the Division of Elections, and STATE OF)
ALASKA, DIVISION OF)
ELECTIONS,)

Defendants.

Case No. 3AN-22-06795 CI

**OPPOSITION TO MOTION FOR SUMMARY JUDGMENT
AND CROSS-MOTION FOR SUMMARY JUDGMENT**

The defendants, Lieutenant Governor Kevin Meyer, Gail Fenumiai, and the Alaska Division of Elections, (collectively “the State” or “the Division”) oppose the plaintiffs’ motion for summary judgment and ask the Court to grant summary judgment in their favor. The Division’s decision not to put fifth-place candidate Tara Sweeney on the general election ballot when a top-four candidate withdrew from the race is mandated by a clear statutory deadline.¹ Although the Division is sympathetic to the public expectation that under Ballot Measure 2, four candidates would advance to the general election, it lacks the discretion to relax an unambiguous statutory deadline to effectuate this goal. But whatever this Court decides, it must do so

¹ See AS 15.25.010; AS 15.25.100(a) & (c).

extremely quickly. The special general election ballots must be finalized **by noon on Tuesday, June 28**, and the losing party in this Court will likely need time to seek appellate review.

BACKGROUND

Congressman Don Young died on March 18, 2022, creating a vacancy in the office of United States Representative and requiring Alaska to conduct a special primary and general election to fill the vacancy on short notice.² In a special primary election, voters select the top four candidates to advance to the special general election.³ Then in the special general election, voters use ranked-choice voting to rank the candidates in order of preference.⁴ The winner of the special general election will serve the remainder of the current term vacated by Congressman Young.⁵

The Division carefully planned the schedule for the special primary and general elections to comply with state and federal law.⁶ A special primary must occur “not less than 60, nor more than 90, days after the vacancy,” with the special general election falling on “the first Tuesday that is not a state holiday occurring not less than 60 days after the special primary election.”⁷ Faced with this requirement to conduct a statewide

² Affidavit of Gail Fenumiai at ¶ 2.

³ AS 15.40.140; AS 15.25.010.

⁴ AS 15.25.010; AS 15.15.350(c).

⁵ AS 15.40.170. The regular primary and regular general elections will select the person to serve the next term, which begins in January 2023.

⁶ Fenumiai Aff. at ¶¶ 3-10.

⁷ AS 15.40.140.

election within 90 days, the Division decided to conduct the special primary entirely by mail, as permitted by state law, and the governor scheduled it for June 11.⁸ That placed the special general election on August 16, the same day as the regular primary.⁹ Holding these two elections together means that the Division can conduct the special general election in person, avoiding an additional election and another entirely by-mail process.¹⁰

The special primary election was held as scheduled on June 11.¹¹ The Division will certify the results on June 25—this Saturday.¹² This schedule allowed time for ballots that were voted and postmarked by election day to arrive by Tuesday, June 21, and for the State Review Board to complete its process.¹³ June 25 is also the statutory deadline for candidates to withdraw from the regular primary election.¹⁴ The Division

⁸ Fenumiai Aff. at ¶ 3; AS 15.20.800(a) (allowing elections by mail when they occur at a different time than a general, primary, or municipal election).

⁹ Fenumiai Aff. at ¶ 3; AS 15.40.140.

¹⁰ Fenumiai Aff. at ¶¶ 3, 8-10.

¹¹ Contrary to the characterizations in the complaint and the plaintiffs' motion for summary judgment, the June 11 special primary was not "the first ranked-choice election in Alaska history." [Pl. MSJ at 2] It was a single-choice top-four primary election. The special general election on August 16 will be the first time Alaskans cast ranked-choice votes.

¹² Fenumiai Aff. at ¶ 4.

¹³ *Id.* The State Review Board is a bipartisan board that conducts the final review of the election results before certification. *See* AS 15.20.220.

¹⁴ AS 15.25.055 ("A candidate's name must appear on the primary election ballot unless notice of the withdrawal from the primary is received by the director at least 52 days before the date of the primary election.").

administratively set June 26 as the deadline by which candidates must withdraw from the special general election in order for their names not to appear on the ballot.¹⁵

Because the special general and regular primary elections are occurring on the same day—and on the same ballot—the Division must know the final list of candidates for both elections before it can print the ballots.¹⁶ And the ballots for the August 16 combined elections must be printed by July 1 so that the Division can mail them to uniformed and overseas voters 45 days in advance, as federal law requires.¹⁷ To meet this deadline, the Division must finalize the ballot design by June 28.¹⁸ Any delay to the timeline for finalizing the slate of candidates for the special general election ballot will disrupt the elections; it would require either missing the federal deadline to send ballots to uniformed and overseas voters, or separating the special general election from the regular primary election on August 16 and instead conducting it entirely by mail at a later date, prolonging the vacancy in the United States House.¹⁹

¹⁵ Fenumiai Aff. at ¶ 5. No statute similar to AS 15.25.055 mandates placing the name of a withdrawn candidate on a general election ballot unless a withdrawal deadline is met. A regulation, 6 AAC 25.210(b), does require placing the name of an eligible candidate on the general election ballot unless the candidate withdraws “not later than the close of business on the 64th day before the date of the general election.” This deadline is not in statute, and including Dr. Gross on the ballot given his withdrawal would only confuse voters in this election and harm the public interest.

¹⁶ *Id.* at ¶ 8.

¹⁷ *Id.* at ¶¶ 6-9; 52 U.S.C. § 20302(a)(8).

¹⁸ Fenumiai Aff. at ¶ 8.

¹⁹ *Id.* at ¶ 10.

On June 21, one of the top-four candidates in the special primary election—Dr. Al Gross—withdrew from the special general election.²⁰ Because Dr. Gross withdrew before the Division’s June 26 withdrawal deadline for the special general election, the Division will not print Dr. Gross’s name on the ballot.²¹

Also on June 21, the Division received an inquiry from another top-four candidate about whether the Division would substitute Tara Sweeney—the fifth-place finisher in the special primary election—for Dr. Gross, placing her name on the ballot for the special general election.²² The Division responded by letter that it would not do so because the statute allowing a fifth-place finisher to fill the vacancy left by a withdrawn top-four finisher allows that substitution only if the withdrawal happens 64 or more days before the special general election.²³ The plaintiffs filed suit asking this Court to order the Division to make the substitution. Because the facts are straightforward and undisputed, the parties have quickly cross-moved for summary judgment on this purely legal question of statutory interpretation.

²⁰ *Id.* at ¶ 11.

²¹ *Id.* at ¶ 15, *see supra* note 15. The Division has not yet certified the special primary election, so the order of the candidates is based on unofficial results.

²² Fenumiai Aff. ¶ 14, Exh. A.

²³ Pl. Compl., Exh. A.

ARGUMENT

I. The candidate replacement statute allows the Division to substitute the fifth-place candidate for a withdrawn top-four candidate only if the withdrawal occurs “64 or more days before the general election.”

The statutory scheme gives the Division authority to replace a withdrawn candidate with the fifth-place candidate from the primary only if the withdrawal occurs “64 or more days before the general election.”²⁴ Alaska Statute 15.25.100(a) instructs the Division that “[e]xcept as provided in (b)--(g) of this section, . . . the director shall place on the general election ballot *only* the names of the four candidates receiving the greatest number of votes for an office.” (Emphasis added). The default rule is thus that “only” the top four primary finishers may be placed on a general election ballot. Accordingly, unless the requirements of one of subsections (b)--(g) of AS 15.25.100 are met, the Division cannot put anyone except the top four candidates from the primary on the general election ballot. Alaska Statute 15.25.010 similarly says that unless an exception is met, “only the four candidates who receive the greatest number of votes for any office shall advance to the general election.”²⁵

Contrary to the plaintiffs’ suggestion, Ms. Sweeney is not one of “the top four candidates” [Pl. MSJ at 5] in the special primary. She received the fifth-highest

²⁴ AS 15.25.100(c).

²⁵ Instead of citing subsections (b)--(g) of AS 15.25.100 as possible exceptions to this rule, AS 15.25.010 cites only subsection (d), which concerns candidates for governor and lieutenant governor. This appears to be a drafting oversight. But a strict reading of AS 15.25.010 does not help the plaintiffs; it would mean that candidate substitutions are only ever possible in governor and lieutenant governor races, not that they are available more freely.

number of votes, as the plaintiffs acknowledge elsewhere. [Pl. MSJ at 2; Pl. Compl. at ¶ 9 (“Candidate Tara M. Sweeney (“Sweeney”) received the fifth-greatest number of votes, totaling 9,547, or 5.92% of the votes cast.”)] She therefore is not one of the top four candidates the statutes instruct the Director to place on the ballot.

And no exception to the top-four default rule applies in this case. Subsection (c)—the subsection relevant here—tells the Division the requirements for putting a fifth-place candidate’s name on the general election ballot as a substitute for a withdrawn top-four candidate. The full text is as follows:

Except as otherwise provided in (d) of this section [which concerns candidates for governor and lieutenant governor], if a candidate nominated at the primary election dies, withdraws, resigns, becomes disqualified from holding office for which the candidate is nominated, or is certified as being incapacitated in the manner prescribed by this section after the primary election and *64 or more days before the general election*, the vacancy shall be filled by the director by replacing the withdrawn candidate with the candidate who received the fifth most votes in the primary election.²⁶

Read together, subsections (a) and (c) of the statute tell the Division to substitute “the candidate who received the fifth most votes in the primary election” for a withdrawn top-four candidate only if that candidate “withdraws . . . after the primary election and 64 more days before the general election.” Because Dr. Gross withdrew fewer than 64 days before the special general election—specifically, 56 days—the Division cannot substitute the fifth-place primary candidate into the top four to replace him.

²⁶ AS 15.25.100(c) (emphasis added).

The plaintiffs agree with the Division that AS 15.25.100 applies to a special general election. But they argue that just one small piece of that statute—the 64-day deadline in subsection (c)—does *not* apply to special elections. [Pl. MSJ at 6-7] This position is not supported by the applicable statutes, much less is it “abundantly clear” from their language. [Pl. MSJ at 9] The plaintiffs cannot have it both ways; the Division cannot cherry-pick the authority to substitute a fifth-place candidate from AS 15.25.100(c) while disregarding the 64-day deadline imposed by the same statute.

Alaska Statute 15.40.220 instructs that “[u]nless specifically provided otherwise, *all* provisions regarding the conduct of the primary election and general election shall govern the conduct of the special primary election and special election of the United States senator or United States representative” (Emphasis added). Because nothing in AS 15.25.100 “specifically provide[s] otherwise,” the plain text of AS 15.40.220 makes all provisions in AS 15.25.100 applicable to special elections.

Alaska Statute 15.40.220 goes on to list some examples of the types of provisions that apply to special elections.²⁷ The plaintiffs argue that the absence of the word “deadlines” on that list creates a “specific” exclusion such that *no deadlines* contained anywhere in the election statutes apply to special elections. [Pl. Compl. at 5]

²⁷ AS 15.40.220 (“ . . . including provisions concerning voter qualifications; provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of municipalities; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, reviewing, and certification of returns; provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting.”).

This reading is inconsistent with both the text and common sense. The text of AS 15.40.220 makes “all provisions regarding the conduct of” regular elections applicable to special elections, “[u]nless specifically provided otherwise.” The fact that the statute goes on to list *examples* does not alter the instruction to apply “all” provisions, except where a statute makes an explicit change for special elections only. If AS 15.40.220 meant to make only the listed types of provisions apply to special elections, it would say so; instead it says “all.” And the legislature has specifically confirmed that lists introduced with the word “including”—like the list in AS 15.40.220—are not to be read as exhaustive.²⁸

Even if the plaintiffs were correct in reading “all” out of AS 15.40.220 and concluding that only the types of provisions specifically listed apply to special elections, AS 15.25.100 *is* among those types of provisions. The provisions that apply to special elections “includ[e],” among several others, “provisions regarding the duties, powers, rights, and obligations of the director.” Alaska Statute 15.25.100(a)

²⁸ AS 01.10.040(b) (“When the words ‘includes’ or ‘including’ are used in a law, they shall be construed as though followed by the phrase ‘but not limited to.’”); *see also Millette v. Millette*, 240 P.3d 1217, 1220 (Alaska 2010) (quoting same); *Fantasies on 5th Ave., LLC v. Alcoholic Beverage Control Bd.*, 446 P.3d 360, 369 (Alaska 2019) (“The factors the Board may consider ‘include’ those listed in the statute, but the list is not exhaustive.”); *Thoeni v. Consumer Elec. Servs.*, 151 P.3d 1249, 1258 (Alaska 2007) (“Because the legislature chose to use the word “includes” rather than more exclusive terms, we interpret the definition as a non-exclusive list.”). This is black letter law of statutory interpretation. *See, e.g., In re Mark Anthony Const., Inc.*, 886 F.2d 1101, 1106 (9th Cir. 1989) (citing cases for the proposition that “the use of a form of the word ‘include’ is significant, and generally thought to imply that terms listed immediately afterwards are an inexhaustive list of examples, rather than a bounded set of applicable items”).

articulates a duty of the director: she “shall place on the general election ballot only the names of the four candidates receiving the greatest number of votes for an office.” And the exception in AS 15.25.100(c) similarly tells the director what to do: she “shall” fill a vacancy with the fifth-place vote getter when a top-four candidate withdraws by the deadline. That deadline is baked into the instruction to the director about how to prepare the ballot.

In addition to misreading AS 15.40.220 as an exhaustive list, the plaintiffs incorrectly find a specific provision exempting special elections from all statutory deadlines in AS 15.40.140. But that statute provides just one “deadline”—the time for holding a special election. It says nothing about other deadlines, much less does it “specifically provide” that special elections are exempt from *all* deadlines, as AS 15.40.220 would require for this to be true. Alaska Statute 15.40.140 certainly provides no alternative to the 64-day replacement deadline in AS 15.25.100(c).

The plaintiffs’ atextual readings of AS 15.40.220 and AS 15.40.140 would lead to nonsensical results. In place of the entire complex of deadlines running through the election statutes, the plaintiffs would insert only AS 15.40.140’s timeline for the election itself. All of the other important deadlines necessary to the functioning of the election would not, under the plaintiffs’ reading, apply to special elections. But the election statutes are filled with such deadlines, all of which are important to the orderly functioning of elections.²⁹ Alaska Statute 15.40.140 cannot plausibly be read

²⁹ E.g., AS 15.20.081(k), (l) (requiring the mailing of absentee ballots to uniformed, overseas, and Special Advance voters 45 days before an election); AS

to delete all deadlines, leaving every step in the process wide open to Division discretion.

Another statute that was part of the package passed in Ballot Measure 2 confirms that the 64-day replacement deadline applies to special elections, not just regular elections. Alaska Statute 15.58.020(c)(2)—which tells the Division what to print in official election pamphlets—requires a statement mentioning the 64-day deadline in the pamphlet for “a special primary election.”³⁰ Requiring the Division to inform voters about the 64-day deadline in the context of a special election would not make sense if this (and all other) deadlines did not apply to special elections.³¹

15.10.180 (requiring any nominations for the State Review board 30 days before an election); AS 15.07.070(d) (requiring voters register 30 days before an election); AS 15.20.045(b) (requiring absentee voting stations on or after the 15th day before an election); AS 15.20.081(b) (requiring absentee ballot requests 10 days before an election); AS 15.20.201(a) (requiring the review of absentee ballots begin no less than seven days before an election); AS 15.20.081(e) (allowing absentee ballots postmarked before election day to arrive 10 days after an election); AS 15.20.201(c) (requiring certification of the absentee ballot review 15 days after an election).

³⁰ The required statement for election pamphlets for special primary elections discusses candidates for “a state office or United States senator,” but omits mention of candidates for United States representative. This also appears to be a drafting error rather than an intentional choice. There is no reason, given the plain text of AS 15.25.100(c), to think fifth-place finisher substitutions were intended for special elections of United States senators but not representatives. The immediately preceding election pamphlet subsection, AS 15.58.020(c)(1), requires discussion of the fifth-place substitution in primary elections for both a senator and a representative.

³¹ Because there is no ballot proposition on this special general election ballot, no pamphlet is required here. AS 15.58.010 (requiring an election pamphlet “before each . . . special . . . election at which a ballot proposition is scheduled to appear on the ballot.”) Nevertheless, the statute plainly contradicts the plaintiffs’ argument that the 64-day replacement deadline was not intended to apply to special elections.

The plaintiffs suggest that the Division simply makes up deadlines for special elections. They offer as an example the Division’s choice of June 26—which is less than 64 days before the general election—as the candidate withdrawal deadline, suggesting that the withdrawal and replacement deadlines must be the same. [Pl. MSJ at 4] This is incorrect. These two deadlines are different; the candidate *replacement* deadline is set in statute, but the candidate *withdrawal* deadline is not. The Division cannot violate the clear statutory command that it place “only” the names of the top four on the ballot unless the terms of the AS 15.25.100(c) exception—including the 64-day deadline—are met. No comparable statute requires the Division to place the name of a withdrawn candidate on a general election ballot if it can avoid doing so. The Division thus picked the latest withdrawal deadline possible, given ballot-printing realities, to avoid printing the name of a withdrawn candidate on the ballot. Including a withdrawn candidate like Dr. Gross on the ballot would only confuse voters, complicate the Division’s counting of ranked-choice votes in the general election, and harm the public interest. Because this outcome is not required by statute, the Division chose to avoid it. By contrast, although the desire of some to have the fifth-place candidate appear is understandable, the statute clearly prohibits that substitution.

The Alaska Supreme Court has recognized the “normally salutary doctrine that election deadlines must be strictly construed and strictly enforced,” departing from this doctrine only in cases of ambiguity and adhering to it when faced with deadlines that

“cannot reasonably be considered ambiguous or impossible to comply with.”³² The statutory deadline here is neither ambiguous nor impossible to comply with. The Division would have substituted the fifth-place candidate for Dr. Gross if he had withdrawn before Monday, June 13, 64 days before the August 16 special general election. He could have done so, but he did not.

The plaintiffs suggest that “as a matter of ... necessity” general election deadlines cannot apply to special elections, but they don’t explain what “necessity” prevents applying the 64-day deadline here. [Pl. MSJ at 6] Even in a normal general election, the 64-day withdrawal deadline is 18 days before the Division’s mailing deadline.³³ Under the plaintiffs’ theory, as a matter of “necessity” or “policy,” the Division should substitute a fifth-place candidate for a candidate who withdraws during those 18 days even during a normal election despite the clear statutory deadline. But while this may be practically possible, it would be unlawful.

The plaintiffs provide an affidavit from Scott Kendall, an attorney who participated in the drafting of Ballot Measure 2, who suggests that it would be “illogical” to apply the 64-day deadline here because “in order to be replaced, a candidate must withdraw before he or she even knows the outcome of the election,” making the replacement statute “meaningless.” [Kendall Aff. ¶ 13] But this assumes that the point of the replacement statute is to allow for deliberate political

³² See *State v. Jeffery*, 170 P.3d 226, 234-35 (Alaska 2007) (quoting *Silides v. Thomas*, 559 P.2d 80, 86 (Alaska 1977)).

³³ AS 15.25.100(c); AS 15.20.081(k).

gamesmanship rather than simply just to replace a candidate who “dies, withdraws, resigns, becomes disqualified from holding office . . . or is certified as being incapacitated,” as the statute actually says. Many of these events are beyond a candidate’s control. And Mr. Kendall himself opines that Ballot Measure 2 was designed to reduce political gamesmanship.³⁴ The replacement statute functions whether or not a candidate knows the results of the primary before he or she withdraws, dies, or becomes incapacitated.

The plaintiffs are simply wrong when they suggest that the “fundamental assumptions underlying the ranked-choice voting system” include some guarantee that voters will always have four choices “on any given general election ballot.” [Pl. MSJ at 11] Candidates sometimes withdraw, both before and after the printing of ballots. Candidates can unexpectedly die. Alaska Statute 15.25.100 is specifically designed for such scenarios, and plainly contemplates that sometimes a replacement will not be made and voters will have just three choices. And there is never a guarantee of four choices in any event; if only one, two, or three candidates run in the primary, those candidates will be the only ones on the general election ballot. In fact, many of the races in the August 16 regular primary will have three or fewer candidates.

Mr. Kendall’s opinions about how to interpret Ballot Measure 2 are not “legislative history,” and Mr. Kendall cannot attest to the “will of the voters” who enacted the law. The thrust of his affidavit is that although the statutes might not

³⁴ Kendall Aff. ¶¶ 7-8.

explicitly exempt special elections from the 64-day replacement deadline, and although the statute provides no alternative to that deadline, Mr. Kendall intended that it not apply. But an attorney's opinion about what a statute should have said does not override the actual text passed by the legislature or, in this case, the voters. The plaintiffs do not offer any actual legislative history touching on how voters intended candidate replacement to work in the context of special elections. The 64-day deadline in AS 15.25.100(c) was part of the statutory package that voters passed with Ballot Measure 2, so it would be logical to assume that voters intended for this deadline to apply rather than that they intended for the Division to ignore it.

In sum, the Division does not have the discretion to ignore or change the unambiguous 64-day candidate replacement deadline. Elections cannot function without rules and deadlines.³⁵ Although the Division can draw and revise such lines administratively where the statutes are silent, the Division cannot relax lines clearly set out in statute at its own whim to accomplish policy goals—“[t]o say otherwise would be to invite individual (officials) to render election law confused or chaotic, or to ignore it altogether, according to their personal evaluation of circumstances.”³⁶

³⁵ See *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (“Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections; ‘as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.’”) (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)).

³⁶ *Silides v. Thomas*, 559 P.2d 80, 87 (Alaska 1977) (“The (public official responsible for administering elections) is not authorized to alter or amend mandatory statutes at will, but is bound to follow their requirements, subject only to whatever

II. The 64-day candidate replacement deadline is not unconstitutional.

The plaintiffs suggest that applying the clear 64-day candidate replacement deadline in AS 15.25.100(c) raises constitutional concerns. They argue that voters will be disenfranchised by the Division's decision to follow AS 15.25.100(c), or that candidates' or voters' political rights have been infringed. [Pl. MSJ at 8-9, 12-13] Not so. Every vote has been counted, and the fact that Ms. Sweeney did not garner enough votes to reach the top four does not disenfranchise anyone. The statutory scheme created by Ballot Measure 2 allows very liberal ballot access for any candidate voters might wish to support, as demonstrated by the special primary ballot listing 48 names. All these candidates, including Ms. Sweeney, had a chance to go before voters and attempt to muster sufficient support to reach the top four. None has a *constitutional* right to advance to the next stage, nor do voters have a constitutional right to see their preferred candidates advance if they do not garner enough votes.³⁷ The voters did not "intentionally and clearly nominate[]" Ms. Sweeney—she placed fifth, and the voters surely did not intend that Dr. Gross would unexpectedly withdraw. [Pl. MSJ at 5]

authority he may be given within their provisions to make or whatever extent directing he may, by law, be bound to obey. To say otherwise would be to invite individual (officials) to render election law confused or chaotic, or to ignore it altogether, according to their personal evaluation of circumstances.”) (quoting *Ryshpan v. Cashman*, 326 A.2d 169, 170 (Vt. 1974)); see also *Jeffery*, 170 P.3d at 234.

³⁷ The plaintiffs emphasize the expectations of the candidates and voters, [Pl. MSJ at 3] but the 64-day deadline is clearly spelled out in statute. Candidates and voters should not have expected that the Division would ignore the statute.

Applying the 64-day statutory deadline to prevent a fifth-place candidate from advancing to the general election raises no constitutional problem.

The Alaska Supreme Court has adopted the U.S. Supreme Court's "flexible standard" for examining election laws, which "involves a careful balancing" of interests.³⁸ Under the Alaska Supreme Court's formulation of the test—which the plaintiffs do not address—a court must (1) "determine whether the claimant has in fact asserted a constitutionally protected right," (2) "assess 'the character and magnitude of the asserted injury to the rights,'" (3) "weigh 'the precise interests put forward by the State as justifications for the burden imposed by its rule,'" and (4) "judge the fit between the challenged legislation and the state's interests in order to determine 'the extent to which those interests make it necessary to burden the plaintiff's rights.'"³⁹

The plaintiffs' constitutional argument fails on the first and second prongs of this test: they have not identified any "constitutionally protected right," of Ms. Sweeney or anyone else, that is injured or burdened by the 64-day candidate replacement deadline. Although *restrictions* on ballot access implicate the associational rights of candidates and voters,⁴⁰ the statutory scheme created by Ballot

³⁸ *State, Div. of Elections v. Green Party of Alaska (Green Party I)*, 118 P.3d 1054, 1059-60 (Alaska 2005).

³⁹ *Id.* at 1061.

⁴⁰ *See Green Party of Alaska v. State, Div. of Elections (Green Party II)*, 147 P.3d 728, 734 (Alaska 2006) ("[L]aws restricting ballot access 'place burdens on two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively.'").

Measure 2 does not restrict ballot access at all: any qualified person may file to run in the open primary by simply filling out a declaration of candidacy, as Ms. Sweeney did here.⁴¹ From there, the voters decide which four candidates advance to the next stage.

Under the old system, the law restricted ballot access by way of requirements for political party recognition and signature-gathering. Candidates seeking party nomination could run in party primaries, but only parties that met the requirements for recognition could use this system.⁴² Candidates outside the recognized party system could reach the ballot only by collecting voter signatures on a nominating petition.⁴³ Thus, under the old system, the requirements for party recognition and signature gathering served as gatekeepers to candidates' ballot access and were subject to constitutional scrutiny for that reason.⁴⁴ The new system, by contrast, has no such restrictions: any person may file to run in the primary, so any political party or group may field primary candidates without the need to meet the requirements for recognized party status, and independent candidates no longer need to gather signatures.

The statutory instruction that only the top four candidates from the primary proceed to the general election (unless the requirements for replacement are met) is not

⁴¹ See AS 15.25.030.

⁴² See AS 15.80.010(27) (defining recognized political party).

⁴³ See AS 15.25.140 *et seq.* (repealed Feb. 28, 2021).

⁴⁴ *Green Party I*, 118 P.3d at 1062 (“[T]he statutes challenged here directly limit who may participate in choosing a political party’s candidates.”); *Vogler v. Miller*, 651 P.2d 1, 4 (Alaska 1982) (explaining that a petition candidate was denied ballot access because he did not gather enough signatures to meet the statutory threshold).

a ballot access restriction because ballot access—properly conceived—is simply the opportunity to run for office.⁴⁵ The new system, unlike the old system, lets anyone have that chance, without any need for candidates or parties to demonstrate any threshold “modicum of support” as a prerequisite to going before the voters.⁴⁶ A candidate who does not make the top four in Ballot Measure 2’s open, nonpartisan primary has not been deprived of ballot access, unlike an independent candidate who could not gather enough signatures to get on the ballot under the old system, or a political group that could not meet the State’s standards for recognized party status.⁴⁷ Instead, a candidate who does not make the top four—like a candidate who lost in the old, partisan primary—has had their name presented to the voters, and has simply failed to win adequate support to move forward in the process.

In short, the requirements for reaching the second stage of Ballot Measure 2’s two-stage election process do not burden the constitutional rights of candidates who do not make the cut, or voters who wish to support them. Such candidates have gone

⁴⁵ See *Green Party II*, 147 P.3d at 734.

⁴⁶ The State may require “some preliminary showing of a significant modicum of support” before printing a candidate’s name on the ballot to avoid “laundry list” ballots. See *State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 980 (Alaska 2005); *Vogler* 651 P.2d at 4. Ballot Measure 2 does away with the requirement of any preliminary showing of support to appear on the primary ballot, and advances the top four candidates to the general election ballot.

⁴⁷ Cf. *Green Party II*, 147 P.3d at 730 (explaining that Green Party candidates could not run in the partisan primary because the Green Party did not meet the requirements for party recognition); *Vogler*, 651 P.2d 1 (explaining that a petition candidate was denied ballot access because he did not gather enough signatures to meet the statutory threshold).

before voters, and having failed to win enough votes to advance further, they have no more constitutional right to proceed to the general election than a second-place finisher in a primary under the old partisan primary system would have had. A two-stage election process would not be possible if the statutorily defined requirements for advancing to the second stage were subjected to a demanding level of constitutional scrutiny on the theory that they burden the constitutional rights of candidates with lower vote totals and their supporters. For example, a fifth-place candidate who received just one vote less than a fourth-place candidate could argue that she is constitutionally entitled to advance too, given her nearly equivalent support.

Because the 64-day candidate replacement deadline does not burden anyone's constitutional rights, the Division need not offer any justification to weigh against a burden. But to the extent the Court perceives a modest burden on some constitutional right, it is justified by the State's interests. In the election context, the State's important regulatory interests in the orderly, timely performance of its duties to run elections are generally sufficient to justify reasonable, nondiscriminatory restrictions.⁴⁸ The law must draw administrable lines somewhere "if some sort of order, rather than chaos, is to accompany the democratic processes."⁴⁹ The statutory provisions adopted by the voters in Ballot Measure 2—which allow anyone to run in the primary, but limit

⁴⁸ See *Alaska Democratic Party*, 426 P.3d at 909 ("modest or minimal burdens require only that the law is reasonable, non-discriminatory, and advances 'important regulatory interests.'").

⁴⁹ *Burdick*, 504 U.S. at 433 (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)).

the candidates on the general election ballot to the top four finishers unless a replacement can occur at least 64 days before the election—are reasonable and nondiscriminatory, so they raise no constitutional concerns.

III. The Court must issue an extremely prompt decision to ensure that the elections are not disrupted.

Whatever this Court decides, the Division emphasizes again that it must have the final answer—including the result of any appeal from this Court’s ruling—**before noon on June 28**. Any delay beyond that “drop dead” deadline would prevent the Division from printing ballots in time for an election on August 16. This would require either missing the federal deadline to send ballots to uniformed and overseas voters—thereby compromising those voters’ rights—or decoupling the special general election from the regular primary election on August 16 and instead conducting it entirely by mail at a later date, prolonging the vacancy in the United States House.⁵⁰ Decoupling the special general election from the regular primary would place upon the public the extraordinary, unnecessary, and expensive burden of yet another election—the state’s first ranked-choice voting election—conducted entirely by mail. And Alaska would remain unrepresented in the House beyond September. The Division thus asks this Court to rule in time to allow an appeal by the non-prevailing party and an Alaska Supreme Court decision by noon on June 28.

⁵⁰ Fenumiai Aff. at ¶ 10.

CONCLUSION

The State asks this Court to issue a very prompt decision denying the plaintiffs' motion for summary judgment and granting summary judgment to the State.

DATED June 23, 2022.

TREG R. TAYLOR
ATTORNEY GENERAL

By: /s/ Katherine Demarest

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**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE**

SUNNY GUERIN, ELIZABETH)
ASISAUN TOOKVAK, and VERA)
LINCOLN,)

Plaintiff,)

v.)

KEVIN MEYER, in his official)
capacity as Lieutenant Governor of the)
State of Alaska; GAIL FENUMIAI, in)
her official capacity as the Director of)
the Alaska Division of Elections, and)
the STATE OF ALASKA, DIVISION)
OF ELECTIONS,)

Defendants.)

Case No. 3AN-22-06795 CI

AFFIDAVIT OF GAIL FENUMIAI

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

1. I am the director of the Division of Elections for the State of Alaska, and I have personal knowledge of the matters in this affidavit. I was first appointed as director in January 2008 after serving in other roles in the Division for approximately 10 years. I ended my first tenure as director in July 2015 and then was reappointed by Lieutenant Governor Kevin Meyer in January 2019.

2. Congressman Don Young passed away on March 18, 2022. His death necessitates a special primary election and a special general election to fill his vacant seat for the remainder of the term. The representative for the next term will be elected in the regular primary and general elections, which will take place on August 16 and November 8. The four candidates who receive the most votes advance out of the special and regular primary elections.

3. The special primary election occurred on Saturday, June 11. Alaska Statute 15.40.140 requires this election occur “not less than 60, nor more than 90, days after the vacancy occurs.” The special general election must then occur on “the first Tuesday that is not a state holiday occurring not less than 60 days after the special primary election.” With the special primary election on June 11, the special general election will be on August 16, the same day as the regular primary.

4. Ballots that were voted and postmarked by election day could have arrived as late as Tuesday, June 21. The Division has reviewed and counted these ballots and the State Review Board process is underway. The Division expects to certify the results of the special primary election on or before Saturday, June 25.

5. The Division administratively set a withdrawal deadline of Sunday, June 26 at noon, to allow candidates in the special primary election the chance to remove their name from the ballot after the results are certified but before the ballots are finalized. The Division selected this date and time because it was after the expected date of certification but it still provided the Division a reasonable amount of time to finalize,

print, and mail ballots. June 25 is the statutory withdrawal deadline for the regular primary election.

6. Federal and state law require the Division to mail the special general ballots to uniformed, overseas, and “State Advance” voters by Saturday, July 2—45 days before the election. The Division will send ballots to 788 uniformed, overseas, and State Advance voters.

7. The ballots for uniformed, overseas, and state voters are processed through the United States Postal Service bulk mail facility in Anchorage. Bulk mail is not available on Saturdays, so the Division must mail these ballots on Friday, July 1.

8. The Division must know the results of the special primary and the final list of candidates for the special general and regular primary before it can print the ballots that will include both elections. In order to print the ballots and meet the federal law ballot-mailing deadline, the Division must know which candidates will be on the ballots by noon on Tuesday, June 28 at the absolute latest.

9. If the candidates for the special general election ballot are identified later than noon on Tuesday, June 28, the Division will not have time to print and mail ballots in accordance with federal and state law. Uniformed, overseas, and State Advance voters will not receive their ballots in time.

10. Any delay in the final results of the special primary election would force the Division to uncouple the special general and regular primary elections. The special general election—the state’s first ranked-choice voting election—would have to occur

separately, later than required by state law, and likely by mail. Any delay in the special general election will prolong the vacancy in the U.S. House of Representatives.

11. Dr. Al Gross, a candidate for the vacant and full-term U.S. House seat, filed his withdrawal from the special general and regular primary elections with the Division on Tuesday, June 21, 2022.

12. Although the results are not yet certified, Dr. Gross is currently the candidate with the third most votes in the special primary election.

13. The candidate with the fifth most votes is currently Tara Sweeney.

14. Also on Tuesday, June 21, a representative of a top-four candidate sent me a letter concerning the substitution of Ms. Sweeney for Dr. Gross. A true and correct copy is attached as Exhibit A. The Division's response is attached as Exhibit A to the plaintiffs' complaint.

15. Alaska Statute 15.25.010 instructs that "only the four candidates who receive the greatest number of votes for any office shall advance to the general election." And AS 15.25.100(c) allows the candidate in fifth place to replace one of the top four candidates if one of those candidates withdraws "64 or more days" before a general election.

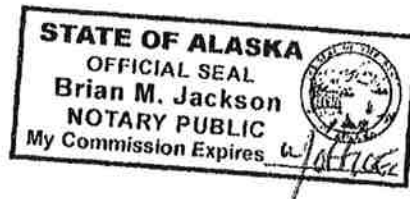
16. June 21 is 56 days before August 16, so the Division is not authorized to place the fifth-placed candidate on the special general ballot. The Division will remove Dr. Gross's name from the regular primary and special general sections of the August 16 ballot because he filed his withdrawal before June 26 at noon. Therefore, the special

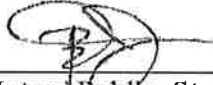
general ballot will include the top three candidates and one space for voters to rank a write-in candidate.

DATED: June 23, 2022


Gail Fenumiai

SUBSCRIBED and SWORN before me this 23 day of JUNE, 2022.




Notary Public, State of Alaska
My commission expires u/office

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

SUNNY GUERIN, ELIZABETH ASISAUN
TOOVAK, and VERA LINCOLN,

Plaintiffs,

v.

KEVIN MEYER, in his official capacity as
Lieutenant Governor of the State of Alaska,
GAIL FENUMIAI, in her official capacity as
Director of the Division of Elections, and the
STATE OF ALASKA DIVISION OF
ELECTIONS,

Defendants,

v.

ALASKANS FOR NICK BEGICH,

Intervenor.

Case No. 3AN-22-06795 CI

OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

COMES NOW Intervenor Alaskans for Nick Begich ("Begich"), by and through its counsel of record, Holmes Weddle & Barcott, P.C., and hereby opposes Plaintiffs' motion for summary judgment. Begich asserts that there are no genuine issues of material fact in dispute and that summary judgment is appropriate.

BACKGROUND

Due to the unexpected death of Congressman Don Young, and pursuant to AS 15.40.140, the Division of Elections ("Division") held a special primary election on June 11,

2022. Under the new ranked choice voting system in Alaska, the top four candidates advance to the special general election; those candidates are projected to be: Sarah Palin, Nick Begich, Al Gross, and Mary Peltola. Tara Sweeney is projected to finish in fifth place.

Dr. Gross announced his withdrawal from the election on June 20, 2022. And in response, the Division stated on June 21, 2022 that the election would proceed with three candidates rather than four.

ANALYSIS

The Division was correct in its interpretation and application of AS 15.25.100(c). Accordingly, the court should deny Plaintiffs' motion for summary judgement.

I. Dr. Gross withdrew too late for Ms. Sweeney to be included on the ballot.

First, AS 15.40.220 states that "unless specifically provided otherwise, all provisions regarding the conduct of the primary election and general election shall govern the conduct of the special primary election and special election of the . . . United States representative." There are no provisions – statutory or otherwise – that specifically apply to special elections with respect to candidate withdrawal, so AS 15.25.100(c) controls and the Division is bound by it.

Per AS 15.25.100(c),

if a candidate nominated at the primary election dies, withdraws, resigns, becomes disqualified from holding office for which the candidate is nominated, or is certified as being incapacitated in the manner prescribed by this section after the primary election and 64 or more days before the general election, the vacancy shall be filled by the director by replacing the withdrawn candidate with the candidate who received the fifth most votes in the primary election.

Accordingly, Dr. Gross withdrew his candidacy too late for Ms. Sweeney to be included on the special general election ballot because he did so only fifty-seven days prior to the election rather than at least sixty-four.

The Plaintiffs seemingly argue that only part of AS 15.25.100(c) is applicable, rather than the whole of it, because special elections require shortened timelines as compared to regularly-scheduled elections. But they failed to cite any authority to support their argument; accordingly, their position is incorrect and misguided. Pursuant to AS 15.40.220, the whole of AS 15.25.100(c) controls because no other authority – statutory or otherwise – specifically provides for a different timeline for a candidate to withdraw and another to replace him or her in a special election.

The Plaintiffs' argument that the Division is "[ignoring] the most basic rules of statutory interpretation, undermining the plain language of the statutes . . ." is wrong because it is their interpretation that ignores the most basic rules of statutory construction. "Statutory interpretation begins with the plain meaning of the statutory text."¹ And here, the text of the statute could not be clearer. There is no other governing provision for a special election, so AS 15.25.100(c) is applicable and Dr. Gross withdrew too late for Ms. Sweeney to be included on the special general election ballot.

Additionally, the Plaintiffs' argument that the Division's application of AS 15.25.100(c) violates "the intent of the Alaska legislature" is incorrect. The Plaintiffs want the court to interpret AS 15.25.100(c) in a manner that renders the sixty-four day timeline superfluous for special elections, but the court cannot do that because the court must presume that every word was intended, has a purpose, and is not superfluous.²

¹ *Nelson v. Municipality of Anchorage*, 267 P.3d 636, 642 (Alaska 2011).

² *See State, Dep't of Commerce, Cmty. & Econ. Dev., Div. of Ins. v. Alyeska Pipeline Serv. Co.*, 262 P.3d 593, 597 n.33 (Alaska 2011) ("At some point, it must be assumed that the legislature means what it says." (quoting *State v. Campbell*, 536 P.2d 105, 111 (Alaska 1975), *overruled on other grounds by Kimoktoak v. State*, 584 P.2d 25, 31 (Alaska 1978))); *Kodiak Island Borough v. Exxon Corp.*, 991 P.2d 757, 761 (Alaska 1999) ("When we engage in statutory construction, we

Their argument seemingly rests upon the notion that voters are guaranteed four choices in every ranked choice general election. However, many of the state legislative primary elections that will appear on the same ballot that is at issue in this litigation will have three or fewer candidates, which necessarily means that voters will not have four choices on those respective ballots in November.³

Further, this argument completely ignores the fact that the voters would only get to choose between three candidates if Dr. Gross, or another of the top four candidates, died or became incapacitated between June 26 and Election Day. They are not guaranteed four choices on a general election ballot, and they have failed to point to any authority that states otherwise.

II. The Division's interpretation does not violate the fundamental right to vote.

The argument that the Division is somehow impeding Alaskans' right to vote by enforcing the sixty-four day timeline in AS 15.25.100(c) is misguided. Thousands of Alaskans chose between forty-eight candidates in the special primary election. And every eligible voter in Alaska will have the opportunity to choose their next member of Congress on August 16, 2022. The Division's interpretation has not and will not impede a single voter's right to vote.

Contrary to the arguments of the Plaintiffs, the Division does not need a compelling reason to exclude Ms. Sweeney from the ballot because the voters have already done so. The

must . . . presume 'that the legislature intended every word, sentence, or provision of a statute to have some purpose, force, and effect, and that no words or provisions are superfluous.'" (quoting *Rydwell v. Anchorage Sch. Dist.*, 864 P.2d 526, 528, 530-31 (Alaska 1993)).

³ It should be noted that 6 AAC 25.210(b), similar to the statute AS 12.25.100(c), provides that Dr. Gross's name should remain on the ballot because he withdrew less than sixty-four days before the election. So, there would be four names on the ballot if the Division followed its own regulation.

voters chose their top four and she was not among them. It is not the court's place to now step into this election and change the rules at the eleventh hour.

CONCLUSION

The Division must follow AS 25.15.100(c) and exclude Ms. Sweeney from the special general election ballot. For the reasons articulated above, the court should deny the Plaintiffs' motion for summary judgment.

DATED this 23rd day of June, 2022 at Anchorage, Alaska.

HOLMES WEDDLE & BARCOTT, P.C.
Attorneys for Intervenor
Alaskans for Nick Begich

By: /s/ Richard R. Moses
Stacey C. Stone, ABA No. 1005030
Richard R. Moses, ABA No. 1311096

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, 2022, a true and correct copy of the foregoing was sent to the following via Email:

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Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

SUNNY GUERIN, ELIZABETH ASISAUN
TOOVAK, and VERA LINCOLN,

Plaintiffs,

v.

KEVIN MEYER, in his official capacity as
Lieutenant Governor of the State of Alaska;
GAIL FENUMIAI, in her official capacity as
the Director of the Alaska Division of
Elections, and the STATE OF ALASKA,
DIVISION OF ELECTIONS,

Defendants.

Case No. 3AN-22-06795 CI

**REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND
OPPOSITION TO DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT**

Plaintiffs Sunny Guerin, Elizabeth Asisaun Toovak, and Vera Lincoln, by through
its counsel of record Birch Horton Bittner & Cherot, hereby reply to the above-captioned
parties' respective oppositions to Plaintiffs' Motion for Summary Judgment and oppose

Defendants' Cross-Motion for Summary Judgment. Defendants the State of Alaska, Division of Elections, Kevin Meyer, in his official capacity as Lieutenant Governor of the State of Alaska, and Gail Fenumiai, in her capacity as Director of the Division of Elections (collectively the "Division" or "DOE") seek to apply general election deadlines to the expedited special election process despite the plain language of the statutes, legislative and voter intent underlying those laws, public interest, and the fundamental rights of voters and candidates afforded by the Alaska Constitution. Similarly, Intervenor candidate Nick Begich intervenes in support of the Division despite these fundamental violations of law and policy.

The Division's interpretation of Alaska's election laws, if accepted by this court, would permit the Division to manipulate the rights afforded voters and candidates by permitting the Division to:

1. Select, through the governor, a special election date that deprives special election candidates of rights afforded their general election counterparts;
2. Prioritize adherence to technical general election provisions over substantive core components of Alaska's voting scheme; and
3. Bypass and ignore notice requirements that ensure Alaska voters and candidates are aware of the applicable deadlines in a given special election.

Plaintiffs' interpretation of Alaska election law preserves the discretion of the governor and the Division to regulate the timing and deadlines imposed in special elections to the extent permitted, and intended, by law. If the Division's position is left uncorrected, its error will be exacerbated by the substantial harm to the public's interest

that results from the Division's misinterpretation of the relevant laws. The Division has the ability to cure the harm by simply honoring the substantive provisions of Alaska's elections without disrupting the finality and order of the special election process, especially when balanced against the grave harm to not only the voters and candidates in the 2022 special election, but also to the voters who supported the adoption of the election provisions that the Division's interpretation sidesteps.

I. THE DIVISION'S INTERPRETATION OF ALASKA STATUTE PERMITS THE GOVERNOR TO SELECT A SPECIAL ELECTION DATE AND OTHER SPECIAL ELECTION DEADLINES WHILE IMPOSING OTHER GENERAL ELECTION DEADLINES TO FORECLOSE FUNDAMENTAL AND STATUTORY RIGHTS OF ALASKA VOTERS AND CANDIDATES.

Despite Defendants' and Intervenor's attempts to suggest otherwise, Plaintiffs' analysis of the applicable statutes and the constitutional violations arising from it are grounded squarely in the plain language of the statute, common sense, and rational thought. Conversely, the interpretation presented by the Division, and supported by Intervenor, would not only deprive voters of the electoral process that they themselves have adopted, it would have far reaching and debilitating consequences on the Division's ability to administer special elections of this nature in the future. Indeed, even the Division's administration of the 2022 Special Primary Election would constitute several violations of Title 15 and the general election requirements. Given these consequences, it is worth reiterated the basic premise asserted by Plaintiffs and the mischaracterization of this premise by opposing parties.

As acknowledged by all parties, AS 15.25.100(c) mandates that when a candidate nominated in a primary withdraws, "the vacancy shall be filled by the director by replacing

the withdrawn candidate with the candidate who received the fifth most votes in the primary election.” The dispute in this case is Plaintiffs’ assertion that while the provision pertaining to election conduct applies, requiring candidate replacement, the imposition of deadlines specific to “general elections” cannot and was not intended to apply.¹ Both the Division and Intervenor inaccurately state that, as summarized by Intervenor, “no provisions-statutory or otherwise-that specifically apply to special elections with respect to candidate withdrawal, so AS 15.25.100(c) controls and the Division is bound by it.”² Plaintiffs agree that there are no provisions that specifically address candidate withdrawal and replacement in special elections and thus this conduct is governed by AS 15.25.100(c).

There is, however, a provision prescribing specific time periods mandated for special elections and thus the time periods, and associated deadlines, imposed on only general elections do not apply to special elections. More specifically, AS 15.40.140 states in part:

[w]hen a vacancy occurs in the office of United States senator..., the governor shall, by proclamation, call a special primary election to be held on a date not less than 60, nor more than 90, days after the date the vacancy occurs, to be followed by a special election on the first Tuesday that is not a state holiday occurring not less than 60 days after the special primary election.³

Given the discretion afforded the governor and the Division in selecting a date for the special election, it necessarily follows that the Division would also establish the

¹ See, e.g., Division Opp. to Mot. for Summ. J. at 8.

² Intervenor Opp. to Mot. for Summ. J. at 2.

³ AS 15.40.140.

corresponding deadlines, subject of course to deadlines that apply to all elections or expressly to special elections. This interpretation harmonizes the multiple provisions throughout Title 15 that provide specific deadlines for “elections” without specifying “general elections” or “special elections.”⁴ Similarly, it also affords a consistent reading with statutes that expressly enumerate deadlines for special elections.

Special elections are, by their nature, unpredictable. Unlike general elections, we cannot foresee the events that will trigger them. Thus, by adopting an alternate time period for special elections, the statutes preserve the Division’s ability to adopt deadlines that actually work for the special election at issue. To the extent that there are time periods that do work for both special and general elections, the legislature has specifically and expressly ensured that these deadlines apply by using language that applies those deadlines to elections as a whole. The Division’s attempt to rely on the notice requirements in the voter pamphlet statute only exemplifies this point. As conceded by the Division, it did not prepare a voter pamphlet for the 2022 Special Election because it was not required to do so. Election pamphlets need only be prepared in those “state primary, special, or special primary election at which a ballot proposition is scheduled to appear on the ballot.”⁵ While there is specific language in the voter pamphlet statute requiring the 64-day general election deadline in special elections containing propositions, no such statement is required for special elections like the one at issue here.

⁴ See, e.g., 15.20.064 (early voting “15th day before ‘an election’”); AS15.20.061 (absentee voting in person: “on or after 15th day before an election up to date of election”)

⁵ AS 15.58.010.

Thus, this statute only demonstrates that when the legislature intends to apply a deadline to a special election, of any type, it makes that clear. This makes sense given that there is a specific time period required for special elections and thus time periods and deadlines applicable to such time periods do not apply to special elections.

Interpreting AS 15.25.100 in the manner proposed by the Division and Intervenor not only contradicts the letter of the law and the language of the statute, it also leads to an absurd result. The Division selected the date of the special election, through the Governor. If some of the statutory deadlines that apply in general elections are applied by the Division, combined with its ability to establish the date from which those deadlines would run, politicians would be given discretion to manipulate the technical aspects of the voting process to undermine the substantive components of the electoral process. This not only leads to the harmful results evidenced in this case; it undermines the electoral process as a whole.

II. THE DIVISION'S ADOPTION OF A TIMELINE THAT OMITTED THE GENERAL ELECTION 64-DAY DEADLINE IT NOW ATTEMPTS TO APPLY LEADS TO AN IRRATIONAL RESULT AND VIOLATES THE FUNDAMENTAL RIGHTS OF VOTERS AND CANDIDATES TO HAVE NOTICE OF THE ELECTION PROCEDURES IMPOSED BY THE DIVISION.

The Division and Intervenor's interpretation of election law is not only counter to the express language of the statute and logic, it contradicts the Division's own interpretation of the statutes and their application to the 2022 Special Election.

According to AS 15.25.040, the filing deadline for candidates is June 1 of the year in which a general election is held. Thus, applying the Division's rationale, the filing deadline for candidates in the primary election should have been June 1, 2022, a mere

10 days before the June 11, 2022 special primary election. Understandably, the Division did not apply this general election deadline, which would make little sense in light of the two to three-month period permitted for the special election. Instead, it noticed and adopted a filing deadline that made sense given the time period imposed for the 2022 Special Election: April 1, 2022.

In addition to the Division's disregard for the filing deadline that necessarily applies under its own logic, the statutory timelines that the Division *did* apply exemplify the absurdity of the statutory interpretation it now attempts to justify. While many deadlines in the 2022 Special Election timeline were based on statutes, the statutes relied upon did not involve deadlines for "general elections." Rather, the deadlines derived from statutes that simply referred to "elections," not "general elections" or included express requirements that the deadlines imposed apply to special elections.⁶

In interpreting statutory language in Alaska, the court examines both the actual text used and its purpose. The Alaska Supreme Court gives statutory language a "reasonable or commonsense construction, consonant with the objectives of the legislature. The intent of the legislature must govern and the policies and purposes of the statute should not be defeated." The court presumes "that the legislature intended every word, sentence, or provision of a statute to have some purpose, force, and effect, and that no words or provisions are superfluous."⁷ Under these fundamental principles of

⁶ See e.g. AS 15.20.061(a)(1); AS 15.20.064; AS 15.20.201(a).

⁷ *City of Kenai v. Cook Inlet Nat. Gas Storage Alaska, LLC*, 373 P.3d 473, 480 (Alaska 2016) (citations omitted).

statutory construction, reading out the word “general” from AS 15.25.100(c) is unfounded as Alaska election laws almost always either include express references to special primary and special general elections or simply refer to “elections” without specifying the type of election. Contrary to Intervenor’s assertions, Plaintiffs fully understand that the legislature “means what it says”⁸ and interpreted the statutes in a manner to afford meaning to all of the election statutes, not just those that served a preordained purpose.

The nonsensical outcome that arises from the application of the Division’s suggested interpretation is also clear upon reading specific provisions in Title 15 that refer solely to “general elections.” Alaska Statute 15.07.140 requires the Division to arrange to have the list of registered voters in a usable electronic format no later than 120 days before the general election. While the Division may very well have complied with this provision, a statutory interpretation imposing that deadline on a special election that was not anticipated or in any way expected 120 days before it occurred defies logic. Further, AS 15.40.420 provides that when a vacancy in the office of state senator occurs one calendar month more before the filing date for the primary election, candidates for the special election shall be nominated in the manner provided for the nomination of candidates for general elections. This suggests, applying basic principles of statutory construction under which words used in our laws are afforded meaning, that they are not nominated in the same manner when the special election falls outside this window.

III. THE DIVISION PROVIDED NO NOTICE OF ITS APPLICATION OF THE 64-DAY GENERAL ELECTION DEADLINE DESPITE THE HARM AND VOTER CONFUSION THAT RESULTED FROM ITS SILENCE.

⁸ Intervenor’s Opp. to Mot. for Summ. J. at 3.

While special elections are subject to timelines and deadlines established by the Division, its duty to provide notice to voters and candidates regarding such deadlines is governed by general election provisions and the Division failed to follow these requirements.

Alaska Statute 15.40.220 expressly states that “provision for notification of the election...” governs special election conduct as well.⁹ Despite this express language applying general election notice provisions to special elections, the Division failed to include its imposition of the 64-day general election deadline foreclosing the replacement of the withdrawn candidate with the candidate with the fifth most votes cast in its timeline. Thus, while its timeline included deadlines for candidate filing, candidate withdrawal from the special primary, voter registration deadlines, and even the deadline for candidate withdrawal from the special election itself, it was silent on the 64-day general election deadline.¹⁰ This decision to exclude this deadline in its timeline, especially in light of its failure to apply other general election deadlines and the lack of a requirement that it issue a voter pamphlet, led to significant voter and candidate confusion as demonstrated by candidate Al Gross’s comments upon resignation reflecting his belief that Tara Sweeney would replace him on the ballot.

The Division’s failure to provide notice in and of itself violates the constitutional rights and statutory expectations of Plaintiffs and warrants a decision by the court remedying the Division’s notice violation. This constitutional violation is easily remedied

⁹ AS 15.40.220.

¹⁰ See Press Briefing-Special Elections Law and Procedures, attached as Exhibit A.

by simply placing Sweeney's name on the ballot, as expected by voters and candidates alike and as needed to protect the public's interest in transparent elections. The alternative (permitting the Division to withhold notice, and selectively apply general election deadlines while choosing an election date that bears consequences to the voters and candidates as a result of those selections) creates a recipe for corruption and manipulation of the electoral process, at best. At worst, it deprives a candidate of their opportunity to prevail and their supporting voters the ability to be represented in the Senate.

The interpretation asserted by the Division and Intervenor also unnecessarily deprives candidates in a special election of rights afforded candidates in a general election. The Division's chosen election date, combined with its application of select general election deadlines, deprives candidates in a special primary election of the ability to know the results of that primary before their opportunity to withdraw runs. This arbitrary outcome serves no purpose. This is especially egregious given the lack of notice provided to candidates of this lost opportunity.

The Division's attempt to downplay the gravity of the interests of the public and the candidates in the placement of Sweeney on the ballot by emphasizing her fifth-place status is also unavailing. The candidate replacement provision is substantive and voter-driven. It is precisely the type of rule that constitutes substantive conduct that must be protected. Alaska Statute 15.40.220 states that:

Unless specifically provided otherwise, all provisions regarding the conduct of the primary election and general election shall govern the conduct of the special primary election and special election of the United States senator or United States representative, including

provisions concerning voter qualifications; provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of municipalities; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, reviewing, and certification of returns; provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting.¹¹

IV. THE HARM RESULTING FROM THE DIVISION'S INTERPRETATION COULD INFLUENCE THE OUTCOME OF THE ELECTION AND CAUSE SUBSTANTIAL HARM TO THE VOTERS' AND CANDIDATES' PARTICIPATION IN THE 2022 SPECIAL ELECTION.

The Stated purpose of General Election 2020, Ballot Measure 2, § 1 is, in relevant part, as follows:

(4) It is in the public interest of Alaska to adopt a primary election system that is open and nonpartisan, which will generate more qualified and competitive candidates for elected office, boost voter turnout, better reflect the will of the electorate, reward cooperation, and reduce partisanship among elected officials.

(5) It is in the public interest of Alaska to adopt a general election system that reflects the core democratic principle of majority rule. A ranked-choice voting system will help ensure that the values of elected officials more broadly reflect the values of the electorate, mitigate the likelihood that a candidate who is disapproved by a majority of voters will get elected, encourage candidates to appeal to a broader section of the electorate, allow Alaskans to vote for the candidates that most accurately reflect their values without risking the election of those candidates that least accurately reflect their values, encourage greater third-party and independent participation in elections, and provide a stronger mandate for winning candidates.

The Division and Intervenor interpretation directly undercuts this stated purpose, causing direct and substantial harm to the voters. Most importantly, however, this harm, which would deprive Sweeney of participation in the election despite the rights afforded by statute and voters of their right to cast their vote for her, is easily avoided. The Division

¹¹ AS 15.40.220 (emphasis added).

need only add a name to the ballot, a task it has admitted that it can do without disrupting the timely and orderly administration of the election. Thus, the harms to Plaintiffs, the voters, and the public interest which would occur as a result of Defendants' and Intervenor's position are substantial, but could easily be eliminated by granting Plaintiffs declaratory relief.

V. CONCLUSION

Ultimately, the Division's interpretation, if accepted, permits it to select an election date that prevents candidates from knowing the results of the primary before deciding whether or not to participate in the general election. In so doing, a candidate in a special election is deprived of the rights afforded candidates in a general election and voters are deprived of a substantive component of the ranked choice voting system. While this outcome is problematic in any context, it is especially offensive here where the provision that the Division sidestepped was implemented by the voter via ballot initiative, not via the legislature. Further, the Division's decision to apply the general election 64-day deadline despite its failure to provide notice of its imposition of this deadline to the 2022 Special Election led to voter and candidate confusion in direct contravention to the public's interest. For all of these reasons, as well as the reasons stated in Plaintiffs' opening Motion for Summary Judgment, the Affidavit of Scott Kendall, and the submitted exhibits, Plaintiffs respectfully request that this court grant the requested relief.

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DATED this 24th day of June, 2022.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 24th day of June, 2022, a true and correct copy of the foregoing was served via electronic delivery on the following:

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Press Briefing on Filling U.S. House Representative Vacancy

March 22, 2022

By: Department of Law and Division of Elections

Alaska Congressman Don Young passed away on March 18. The Congressman's death leaves a vacancy to Alaska's sole seat in the U.S. House of Representatives. This briefing shows what the current law is on filling that vacancy and a potential timeline for the special primary.

1. U.S. Constitution Requires an Election

Under the U.S. Constitution (Article I, Section 2, Clause 4), vacancies to the U.S. House of Representatives must be filled by an election. Appointments are not allowed.

2. Current State Law Requires Special Primary and Special Election

To fill a vacancy, the State must hold two special elections—a special primary and a special (general) election. AS 15.40.140. The Division of Elections estimates that they will need an additional \$2.5 million to conduct these special elections.

The special primary election must be held on a date that is “no less than 60, nor more than 90” days from the vacancy of the seat. AS 15.40.140. The primary is an open, non-partisan primary, where the top four candidates advance to the special general. AS 15.40.220. Because of other deadlines, such as the requirement to send military and overseas voters ballots 45 days in advance of the election, the Division of Elections would need to hold the election between June 11 and June 16. Due to pressures from the regular primary election, June 11 is the preferred date for the special primary.¹

The special (general) election must be held on the first Tuesday (that is not a holiday) occurring not less than 60 days after the special primary. AS 15.40.140. The special (general) election is a ranked choice voting election. AS 15.40.220. The candidate elected will serve the remainder of the unexpired term. AS 15.40.170. If the special primary is held on June 11, then the special (general) election will fall on August 16, the date of the regular primary. The special (general) election and the regular primary would then show up on the same ballot.

In order to give time for candidates to file for the office, the Governor needs to issue the proclamation by March 25.

¹ The Division Director is authorized to conduct the special primary by mail under AS 15.20.800(a). This decision is at the discretion of the Director.

3. Potential Timeline

The following is an initial, rough timeline of dates based on a June 11 special primary (please note that these dates are subject to change as the Division finalizes the process):

90 days prior to Election Day - NOW	Candidacy filing period begins as soon as proclamation signed (must occur by March 25 ²)
71 days prior to Election Day – APRIL 1	Candidacy filing deadline
69 days prior to Election Day – APRIL 4	Withdrawal deadline, Election Project set, and ballot artwork to printer
54 days prior to Election Day – APRIL 18	State Review Board conducts Logic & Accuracy Testing (Test ballots must be received by this date)
45 days prior to Election Day – APRIL 27	Must give notice of absentee voting stations (AS 15.20.050)
	First extraction of registered voter file to print/mail vendor for updates and additions.
	UOCAVA ballots must be mailed
	Hire Bi-Lingual Absentee Voting Officials and Outreach Workers

² Statute provides that the proclamation has to be issued at least 50 days before the special primary, but since the military overseas ballots have to go out 45 days in advance, the proclamation needs to be issued with sufficient time for candidacy filings and then to design and print ballots and meet the 45 day federal requirement.

40 days prior to Election Day – MAY 3	Public notice of election (AS 15.07.140 and AS 15.15.070)
	Hire Absentee Review Boards (at least double regular size)
	Hire temporary staff for ballot logging
	Conduct telephonic training for Bi-lingual Absentee Voting Officials and Outreach Workers.
	Regional offices conduct Logic & Accuracy Testing
30 days prior to Election Day – MAY 12	30 day voter registration cutoff
25 days prior to Election Day – MAY 17	Updated registered voter file to print/mail vendor for updated and new registrations
25 days prior to Election Day – MAY 17	Ballots and other election materials must be in regional offices (AS 15.15.050)
25 days prior to Election Day – MAY 17	Ballots and supplies mailed to absentee voting officials
15 days prior to Election Day – MAY 27	Absentee vote centers open in regional offices and other areas across the state
	Review board begins review of received ballots
ELECTION DAY – JUNE 11	First count of ballots
10 days after Election Day – JUNE 21	Deadline to receive absentee ballots
11 days after Election Day – JUNE 22	State Review Board begins
14 days after Election Day – JUNE 25	Target certification date